

Leave of Absence

Tuesday, May 02, 2006

SENATE

Tuesday, May 02, 2006

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Danny Montano who is ill and Senators Angela Cropper and Ato Boldon who are out of the country.

REVOCAATION OF APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., PhD., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. WALTON FRANCIS JAMES

In exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago and all other powers thereto me enabling, I, GEORGE MAXWELL RICHARDS, President as aforesaid, do hereby revoke with immediate effect your appointment to be temporarily a member of the Senate, made by instrument dated 12th April, 2006.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann’s, this 27th day of April, 2006.”

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have also received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., PhD, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MS. ALTHEA ROCKE

WHEREAS Senator Angela Cropper is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ALTHEA ROCKE, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Angela Cropper.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 27th day of April, 2006.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., PhD, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. JOAN HACKSHAW-MARSLIN

WHEREAS Senator Danny Montano is incapable of performing his duties as Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad

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and Tobago, do hereby appoint you, JOAN HACKSHAW-MARSLIN, to be temporarily a member of the Senate, with effect from 2nd May, 2006 and continuing during the period of illness of the said Senator Danny Montano.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of May, 2006."

OATH OF ALLEGIANCE

Senators Althea Rocke and Joan Hackshaw-Marslin took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Public accounts of the Republic of Trinidad and Tobago for the financial year 2005. [*The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the public accounts of the Republic of Trinidad and Tobago for the financial year ended September 30, 2005. [*Sen. The Hon. C. Enill*]
3. Annual Report of the Teaching Service Commission for the year 2004. [*The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams)*]
4. Report on the operations of the Ministry of National Security for the period 2000 to 2004. [*The Minister of National Security (Sen. The Hon. Martin Joseph)*]
5. Administrative report of the Penal/Debe Regional Corporation for the period October, 2004 to September, 2005. [*The Minister of Local Government (Sen. The Hon. Rennie Dumas)*]

ORAL ANSWER TO QUESTION

Trinbago Unified Calypso Organisation (Auditor General Reports of)

59. Sen. Wade Mark asked the hon. Minister of Community Development, Culture and Gender Affairs:

- a. Would the Minister state the reasons that no Auditor General reports into the accounts of Trinbago Unified Calypso Organisation (TUCO) have been presented to the Parliament for the past four years?

- b. Would the Minister further state when these reports would be submitted to the Parliament?
- c. Would the Minister also state whether any funds/money appropriated by TUCO have been utilized for any purpose other than the promotion, support and propagation of the calypso art form?

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Madam President, I wish to advise that the Act of Incorporation of the Trinbago Unified Calypso Association, Act No. 9 of 1991, makes no provisions or directive to present, at any time, its accounts to the Auditor General. In addition, the Act makes no reference to the Auditor General as a body having the authority to examine the records of financial transactions of TUCO. Therefore, the answer to part b. of the question is now irrelevant.

The available audited financial statements for TUCO indicates that funds or moneys appropriated by the organization have been utilized for the intended purpose, that is, to promote, support and propagate the calypso art form.

Thank you.

Sen. Mark: Madam President, could the hon. Minister indicate which auditing firm audits the accounts of this particular organization. Could the Minister also indicate whether those reports are available for public scrutiny since that organization is funded through public funding?

Sen. The Hon. J. Yuille-Williams: I do not remember the name of the firm, but I suppose the hon. Senator could approach the organization directly.

Sen. Mark: Madam President, could the Minister state whether these accounts are available for public scrutiny and if they are, where can they be found?

Sen. The Hon. J. Yuille-Williams: I am not aware that they are available for public scrutiny, to the best of my knowledge.

Sen. Mark: Could the Minister say whether TUCO is funded by the State and if it is, is it not incumbent upon the hon. Minister to give this Parliament some account as to where we can locate these accounts? It cannot be that they are nowhere.

Sen. The Hon. J. Yuille-Williams: Madam President, there are hundreds of bodies to which the Government gives grants and they do not provide us with these things. These people get some kind of grant from us and they get money from other places; they also raise their own funding. It is not necessary for everyone who receives some kind of funding from the Government to provide that type of audited accounts.

Sen. Mark: Madam President, could the hon. Minister indicate whether as Minister of Community Development, Culture and Gender Affairs she is happy with the state of affairs and what action, if any, does she intend to take to bring this particular organization to book in terms of making accounts available to the population?

Sen. The Hon. J. Yuille-Williams: I have seen the audited statements so far and I am quite happy about them.

Sen. Dr. Gopeesingh: Madam President, many of these papers are laid in the Parliament. We have not been privy to any of these papers being presented to us; namely, the report of the Minister of National Security 2000 to 2004 and the Teaching Service Commission. We have got a copy of the Auditor General's report. We have not gotten the one laid by Sen. Dumas. It would be nice when Members present papers to have them available so we could see them.

Madam President: I believe they will be presented. If they have not yet come, they will come, because they are just on the Supplemental Order Paper. They were supplemental papers that were laid, so that is why you would only get them now.

WRITTEN ANSWERS TO QUESTIONS

Sen. Wade Mark: Madam President, I am getting a bit concerned now for the contempt that is being demonstrated for this Senate via these questions that remain outstanding since October. I think the time has come for you to read the Riot Act. It is either they disrespect this Senate or they comply with the wishes of the Chair. I would like your intervention and I would like some definite answer as to when these answers are going to be submitted; it is too long.

Madam President: All right, Senator; no speeches. I would appeal directly to the Leader of Government Business in the Senate and see what we could do about those answers.

FAIR TRADING BILL

Order for second reading read.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Madam President, 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 read a second time.

Competition policy was introduced in Trinidad and Tobago, as part of the efforts of successive governments to effect economic reforms and liberalization. I say successive governments, because when this Bill was debated in the other place, it started with the PNM's attempts in the early 1990s. The person who for the time being holds the office of political leader of the other party, was quick to remind me that a particular manifesto of 1986—[*Interruption*]

Sen. Mark: Madam President, on a point of order.

Hon. K. Valley: I have not even started yet.

Madam President: What is the point of order?

Sen. Mark: It is unaccepted in this Senate to make any reference to what has taken place in the other House. You cannot have a situation where we were not privy, as a Senate, to what went on in the other place, and the Minister is putting that on the record. If you check our procedures and orders, it is not done that way. I think my honourable friend would be aware of that.

Madam President: Which Standing Order are you referring to?

Sen. Mark: Madam President, I am not referring to any particular Standing Order, but to a practice in this House. If Madam President allows this, then I would be able to raise any issue that has happened in the other place as well and the President would allow me. If that is a practice, I have no problem with it Ken. Once we go with it, we go with it.

Madam President: You can make a passing reference, but you may not call names or make any direct reference; we have done it before. We have made passing reference to something that might have been said, without calling the name of the person or the specific details of what was said.

Hon. K. Valley: Madam President, I am merely making a passing reference. I was merely pointing out that I was corrected on that occasion. I was making the point that a particular political party in its manifesto of 1986 had made reference to a monopolies commission; they had plans to do that. Of course, he was quick to remind us that nothing was done.

In the manifesto of 1991, it was clear that competition policy formed a fundamental part of the PNM's economic reform agenda. In early 1994, we engaged the Adam Smith Institute out of the United Kingdom to advise us on this whole area of competition policy. The consultants reported and the Cabinet accepted, in principle, their recommendations and established a committee to do some further work. One of the tasks this committee had to do was to get some experts in competition policy to assist in drafting the policy document and in implementation.

Another British firm was selected, Maxwell Stamp PLC, and that was in 1997. One sees that an initiative started by the PNM in 1993/1994 was continued by, "huh", the UNC. It was UNC at the time, Madam Speaker—[*Interruption*] Madam President, I do not know what it is now.

Sen. Mark: Well, call elections if you do not know.

Hon. K. Valley: I have no such authority. [*Crosstalk*]

Madam President: Please, can we continue.

Sen. Dumas: Do not bluff, Wade.

Hon. K. Valley: The British firm of Maxwell Stamp was hired to assist the Ministry of Trade and Industry with finalizing and implementing the competition policy framework for Trinidad and Tobago. Coming out of that consultancy was a Green Paper entitled "A Proposal for a Fair Trading Act", which was prepared in 1997 and circulated among stakeholders for public comments. Public hearings were held and comments were received and they were incorporated in our Fair Trading Bill.

At the same time, there was another current of events. The Caribbean Single Market and Economy (CSME), of course, with its nine protocols, included competition policy. Therefore, the revised Treaty of Chaguaramas spoke of the need and the secretariat, working in conjunction with Trinidad and Tobago, developed a model of competition policy legislation. There were some revisions to take into consideration what that model stated. That is the history. We had to put it in line with the Caricom model.

The legislation was approved by Cabinet and was legislated in the other place on July 20, 2005; I think that was the exact date. The last day before we took the summer recess. Subsequent to that, the private sector, specifically the Trinidad

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and Tobago Chamber of Commerce and the Trinidad and Tobago Manufacturers' Association, asked to be allowed to give further input into the legislation. One would see that there was a long gestation; there were discussions and even at that time they wanted to have a further say and the Government decided it was such an important piece of legislation that we would listen. Therefore, the Bill was allowed to lapse to facilitate further comments by the relevant stakeholders.

The Bill before us today, reflects the further contribution of the business community. There were one or two changes from the Bill which was debated in the other place. Specifically, there is now a wider definition for "mergers", which is included in clause 13 of the legislation; perhaps, I am jumping ahead of myself. The basic point is that there was further consultation. We have taken into the legislation the points made by the business community. They are now reflected in the legislation and, therefore, it is legislation with which all parties are now happy.

The legislation deals with four basic issues: the abuse of monopoly power; anti-competitive mergers and anti-competitive agreements and it provides for the enforcement of the relevant clauses or enforcement measures.

If one were to look at clause 4 of the legislation, Madam Speaker—*[Interruption]* Madam President, I am sorry—it provides for establishment of the Fair Trading Commission, the body that is going to oversee the legislation. Clauses 5 to 9 provide for the functions of the Fair Trading Commission. The Bill provides for the establishment of a fair trading commission and the prohibition of anti-competitive mergers. One has to note that the Bill does not stop mergers. It says that if the merger is anti-competitive, then it is going to be illegal. The Bill does not stop monopolies; it is only in a situation where there is an abuse of monopolistic power that it would be an offence. Anti-competitive behaviour, however, is disallowed under the legislation.

The Bill also recognizes the jurisdiction of the CSME Competition Commission. I would come to that, but I want to develop those points, Madam Speaker—Madam President. When I say "Madam Speaker" I am going way back; about 11 years. I should not ever talk about a Madam Speaker. *[Laughter]* I should be very afraid to mention the term "Madam Speaker".

Madam President, the commission will be an independent quasi-judicial body corporate, with the functions to investigate possible breaches of the Act; to advise the Minister on matters relating to the operation of the Act and to disseminate information on matters affecting the interest of consumers. They would have the

power to summon witnesses; require the production of documents and enter and search premises. To be able to do that, they would require a warrant from the High Court. The commission would also have the power to inspect and remove documents and to apply to the High Court for various orders to enforce compliance with the Act.

Mergers are dealt with beginning at clause 13 and, again, I make the point that mergers, per se, are not prohibited under the legislation; anti-competitive mergers are disallowed. So when you look at clause 13(2), it states:

“An anti-competitive merger is a merger which restricts or distorts competition in a market.”

So you can have a merger, if, however, it does not restrict or distort competition, nobody would interfere with you.

The other issue is that there is a threshold under which a merger would not even be looked at. Clause 14(1)(b) of the legislation states:

“enterprises shall not enter into a merger unless they obtain permission from the Commission where—

- (i) their assets exceed fifty million dollars; and
- (ii) at least one of the enterprises carries on or intends to carry on business in Trinidad and Tobago.”

So there is a hurdle. If the merger does not exceed \$50 million one can go ahead; however, as long as it exceeds \$50 million and, at least, one party carries on business in Trinidad and Tobago, one has to get the permission of the commission. The commission would want a look-see to determine whether it is an anti-competitive merger. Even if it is over \$50 million, you would be allowed to continue your merger, as long as you would not distort conditions, as mentioned in 13(2).

Sen. Seepersad-Bachan: You did indicate to us that you spoke to the business sector; I wanted to know what were some of the changes that have been made so far.

Hon. K. Valley: I shall do that before I conclude.

Mergers include joint ventures and amalgamation and can also include interlocking directorships, meaning that if one is a director of firm A and is also the director in firm B, and firm B is really in competition with firm A, and that director really has the influence, well then, for all practical purposes, that is considered a merger. That is included in clause 15:

“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 would 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 to merge.”

With respect to the \$50 million limit, the Bill provides for the Minister to vary that asset limit; that is with respect to merger.

The other wrong that this Bill wants to correct, is the abuse of monopoly power. I make the point that monopolies are not prohibited under the legislation; it is the abuse of monopoly power that is wrong:

“an enterprise has monopoly power...if by itself or together with an interconnected body corporate, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors...”

Monopolies are covered, I think, from clauses 20 to 21.

In clause 21(1) it states:

“an enterprise which has monopoly power, abuses that power if it impedes the maintenance or development of effective competition in a particular market.”

That says, first of all, you must control at least 40 per cent of the market before you are deemed to have monopolistic power. That percentage can be varied by the Minister. That is contained between clauses 20 to 25.

The Bill also defines the ways in which there can be an abuse of monopoly power:

“...an enterprise abuses monopoly power if it—

- (a) restricts the entry of any person into any other market;
- (b) prevents...any person from engaging in competitive conduct in that...market;
- (c) eliminates or removes any person from...market;”

Requiring exclusive dealing or tied sales; saying that you cannot have this product, unless you also take this product—there are one or two firms in Trinidad and Tobago that do that; or market restrictions, carving out. I made the point that unless you have 40 per cent of the market, you are not deemed to have monopolistic power. Those behaviours that I recited a minute ago are not exclusive to us. The set of conditions are outlined in clause 21(2).

Madam President, clause 21(3) points out:

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

- (a) if it is shown that—
 - (i) its behaviour was exclusively directed to improving the production or distribution of goods or to promoting technical or economic progress; and
 - (ii) consumers were allowed a fair share of the resulting benefits; and
- (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 goes on to outline all the conditions.

Under clause 22(2), it states:

“The Commission shall not investigate an enterprise under this section, unless it is satisfied that the enterprise controls forty per cent of the market or more or such percentage as the Minister may by Order prescribe.”

That is the concern I was speaking about a while ago.

The third area that the Bill seeks to address is anti-competitive agreements and one sees that at clauses 17 to 19. Anti-competitive agreements are disallowed under the Bill; these include agreements to fix prices; to limit or control markets; technical development or investment; share markets or source of supply; making contracts subject to extraneous conditions; decisions or concerted practices of associations of enterprises which are intended to prevent or restrict competition.

Madam President, the commission acts with the assistance of the law; therefore, the role of the court is extremely important. The commission can apply to the High Court for an order, inter alia, to prohibit the transfer of shares in a situation where a merger is deemed to be anti-competitive. It can apply to the

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High Court to stop the merger. In a situation in which, on coming into being, there are anti-competitive mergers, the commission can sit with the parties and agree on a transition period and if they fail to agree, again they can apply to the court for a breaking up, as it were, of the merged entity.

There is a story that at one time in the United States, there was this one big oil company, and because of the “something something” Act of 1933, they had to divide the company. That is why you ended up with seven oil companies in the United States. They had this type of legislation quite some time ago.
[*Interruption*]

It can require a company to divest shares or assets. The High Court can review the decisions of the commission and impose a fine not exceeding 10 per cent of the annual turnover of an enterprise which contravenes the Act. The staff of the commission must comprise not less than three, nor more than five commissioners appointed by the President; that would be contained early in the Bill.

The term of appointment for a commissioner must not exceed five years at any one time. The commissioners must have knowledge in law, economics, accountancy, business or management. The commission would appoint the staff of the commission, including an executive director, a secretary and other such employees, as it thinks fit.

Then, of course, there is the Community Competition Commission established under section 171 of the revised Treaty of Chaguaramas. The whole purpose of the Community Commission is to apply the rules of competition in respect of cross border anti-competitive business conduct within the CSME; in other words, trading with our CSME partners. Under this legislation, that commission would be responsible for monitoring anti-competitive business practices of enterprises operating in the CSME and investigate and arbitrate cross border disputes.

The decision of the Community Competition Commission would be binding on the parties and enforceable in the same way as a judgment of the High Court. Of course, the Bill also makes provision for regulations made by the Minister to give effect to the provisions of the Act. Matters to be included in such regulations are guidance for determining that an enterprise has monopoly power; guidance for assessing abuse of monopoly power and guidance for assessing mergers, agreements and practices.

Madam President, clause 3 of the Bill outlines the exemptions. It states quite clearly:

“This Act shall not apply to—

- (a) combinations or activities of employees for their...protection;
- (b) arrangements for collective bargaining...
- (c) companies which fall within the purview of the Telecommunications Act, 2001;
- (d) banks and non-bank financial institutions which fall within the purview of the Securities Industry Act, 1995...”

Sen. Seetahal, S.C: Where it says, “banks and non-bank financial institutions”, are you talking about commercial banks there? If so, why are they exempt, because it seems to me there are only two banking institutions really in Trinidad and Tobago? Republic owns about three and the other one owns about—in that way, there are two conglomerates. In other words, if you are talking about leaving them out, you might have one merger, one giant bank and terrible fees, more than we have already.

Hon. K. Valley: Amendments to the Financial Institutions Act would deal with the banking sector. [*Interruption*]

Sen. Dr. Gopeesingh: Following up on that, if this is a Fair Trading Bill looking at competition, anti-competitive practices and monopolies, I do not think it is easy to gloss over in Trinidad and Tobago that there is a monopolistic situation occurring, as far as the banking sector is concerned. Why are the banking sector and the financial institutions excluded from this Bill, when they are really a major player in any competitive practice? [*Desk thumping*]

Hon. K. Valley: It is the same thing with telecommunications, one considers it so specialized; they may eventually come in later on, but there is the Securities Industry Act as well as the Financial Institutions Act and the Central Bank, so we thought it best to move incrementally. They are specialized institutions; they are governed by the Central Bank and the Securities Industry Act and, therefore, we want to leave them there for the time being. Later on, as we gain experience, they may come under the legislation, but at present we thought it best to leave it that way.

Sen. Dr. Gopeesingh: Mr. Minister, under clause 3, in the exclusion of applications to the Bill, you have defined there:

“such other business or activity declared by the Minister by Order subject to affirmative resolution of Parliament.”

Have you decided what are some of these activities made by the Minister by Order? That should really come now.

Hon. K. Valley: That is merely a proviso and it is by affirmative resolution so as to give you a say. You know the difference between a negative and affirmative resolution. It is what we call peradventure; in case there is some area of our industry that, for whatever reason, we feel it is logical to exclude and, therefore, we would come to Parliament, but we would debate it.

Sen. Mark: I would like to ask the hon. Minister whether state enterprises and quasi state enterprises would be covered.

Hon. K. Valley: Yes.

Sen. Prof. Ramchand: Just so I can understand what the purpose of the Bill is, could the Minister invent an example naming two hypothetical firms, in order to illustrate what is an anti-competitive merger and how that affects ordinary citizens negatively?

Hon. K. Valley: Once upon a time there were two beer companies in Trinidad and Tobago, Stag and Carib. There was a price war and the net result was that Stag was gobbled up. There is one beer company in Trinidad and Tobago, and, of course, prices can be determined by that one company.

Sen. Prof. Ramchand: They have abused their monopoly?

Hon. K. Valley: Yes. As the Minister of Trade and Industry, I think I have to be careful, but there are examples. If one were simply to look at two large companies, each controlling a sizeable percentage of the market; if they were to come together, they can, therefore, so conduct their business to keep out new entrants, so set prices, so share market and so on, to the detriment of the consumer; that is what we are trying to protect today.

Perhaps I should go back to the example of the gas companies in the United States; when there was this one big gas company; you had a product needed by the everyday individual and they could have set the price. The government at the time decided, "Listen, you got to split up that company." It is the same issue that one had with Microsoft. There were a number of cases where Microsoft dealt in a particular way so that other companies could not use its product. The basic concept is that competition moves one to efficiency and benefits the consumer and that is the whole purpose of competition legislation, to ensure that there is an infrastructure where there would be fair play.

Sen. Prof. Ramchand: That is very helpful; I just want to ask one more question. You seem to imply that a monopoly is not anti-competitive by definition and similarly for mergers. Some mergers are anti-competitive and some are not. Who makes the determination in advance?

Hon. K. Valley: It is not in advance. The legislation says that, for example, in the case of mergers, if two firms are merging and the asset base would be \$50 million or more, then they have to get the permission of the commission. So the commission would look at it to determine whether it would distort the market systems and so on. The monopoly is 40 per cent; mergers are \$50 million in asset. Mergers are under clause 13(2):

“An anti-competitive merger is a merger which restricts or distorts competition in the market.”

The commission would look at it to determine whether, in fact, it would have that effect.

Clearly there are certain requirements. To be a commissioner, you have to be trained in economics, law and what have you, so we are saying that you have the knowledge and you can make a determination. But you can appeal. If you are aggrieved and you feel that the commission has done you wrong, you can go to the High Court and get a change in the ruling. So mergers are not bad, per se; monopolies are not bad, per se, but some are, because some abuse their position and that is the purpose of the legislation.

With respect to the changes in the other place, clause 9(3), return of documents, this would mandate the commission to a person any documents seized during an investigation. Clause 13 gives a definition of “merger”. A new clause 13(1) has been added to define “merger”.

Clause 14(5), threshold for mergers, would empower the Minister to vary the asset base for determining mergers. Clause 14(3), automatic approval for mergers, would provide for automatic approval of an application for permission to undertake a merger, if the approval is not given in a timely manner.

Sen. Seetahal, S.C: Were these amendments circulated?

Hon. K. Valley: These are not amendments; they are within the Bill, but they are amendments from the last draft.

Sen. Seepersad-Bachan: What you have consulted with the business community?

Hon. K. Valley: That is right. Clause 15, interlocking directorates; provision is also made for companies with interlocking directorships to apply for permission to undertake a merger.

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In clause 20(b), a definition for interconnected bodies has been included. Clause 22(2) deals with alteration of monopoly thresholds. The Minister has been given the power, by Order, to alter the threshold for monopolies from 40 per cent.

Clause 35, staff of the Fair Trading Commission; it has been amended to empower the Minister to approve terms and conditions for the chief executive officer. Originally the Minister was empowered to fix the terms and conditions.

Clause 47, Community Competition Commission. A definition of "Member State" is included in clause 48. Clause 52 deals with regulations. Clause 53(2) was amended to include paragraphs (b) and (c), provision for the criteria to be used to determine whether a matter would adversely affect competition and for abuses of monopoly power. Several textual improvements have also been made.

2.30 p.m.

Sen. Prof. Ramchand: Madam President, another question. The Minister seems to be in good form so I could ask him this also. Could he explain to us why the Caribbean Court of Justice could not deal with the matters that the Community Competition Commission would have to deal with, and is there a sort of impingement?

Hon. K. Valley: From time to time, Madam President, we are faced with the challenge of either telling the truth or bluffing. I would tell the truth. I want to tell you that I asked the same question at Caricom and my colleague from Suriname nearly killed me. The Competition Commission is supposed to be housed in Suriname. As you know, the CCJ is housed in Trinidad and Tobago. She thought I wanted to grab everything, so I said nothing more.

Madam President, this is it. For some time now we have recognized that there is need for this legislation, especially in an environment where we were liberalizing the economy, where we were divesting state companies, where we were having anti-dumping legislation, and so on, and this is merely part of the environment that is required to assist in moving this country to our 2020 vision. It has had a long gestation period but I think all governments, beginning from 1986, saw the necessity of having this legislation. Whether they did anything is another story, but what we do know is that both the PNM Government and the UNC while they were in government, worked on this legislation, advancing it, and I am extremely happy today to be able to present this legislation to the Senate.

I now commend it to Members of this honourable Senate. [*Desk thumping*]

Question proposed.

Sen. Wade Mark: Madam President, let me welcome my colleague, the hon. Minister of Trade and Industry and Minister in the Ministry of Finance to this honourable Senate once again, and let me say from the very outset that it appears to me, and to us, that we are dealing with essentially old legislation in new circumstances and conditions.

Hon. Valley: That was Mr. Dookeran's argument downstairs, you know. Watch your case.

Sen. W. Mark: While no one could object to the principle of fair trading, the question is whether it is necessary to have legislative support for fair trading when the economy is already operating within a liberalized environment, and has been doing so for the last 20 years. That is what has been happening. It began under the NAR regime when the PNM left the economy bankrupt. The NAR inherited the economy and the IMF came like a dragon at our doors, as Mr. Robinson then told the entire nation, and Trinidad and Tobago was forced into structural reforms via World Bank loans as well as IMF standby agreements.

Trinidad and Tobago, from the 1940s right up to this period, has gone through protection/competition, protection/competition. I am shocked that Minister Valley did not indicate to us—he was known as the “Mr. Sellout Artiste” at the time. He sold out all our enterprises. That is how people described him. He had boasted in the other place that when he came to office—

Hon. Valley: You are referring to another place?

Sen. W. Mark: I have been given the authority to do that, man—passing comment, man.

Hon. Minister Valley, my good friend, indicated that when he became the Minister of Trade and Industry back in 1991 they had inherited some 85 state enterprises.

Hon. Valley: No. Investment, boy; not state enterprises.

Sen. W. Mark: Well, investment, whatever you call it. But when he left there were 47. He did not tell us since he came back into the second incarnation that there are about 89 or thereabouts. So I find the Minister to be a bundle of contradictions in terms. He is on the one hand promoting, what he calls, a competition law through this Fair Trading Bill, but his Government is pursuing, in a very rapid way, a lot of initiatives that would bring about a state-led kind of development process. So we are not too sure where Minister Valley is heading, or his regime.

But I want to ask my honourable friend, he talks about consultation and it seems as if consultation is only restricted to big business.

Sen. Dr. Gopeesingh: Good point.

Sen. W. Mark: In other words, did you consult the workers? Did you consult the labour movement? Did you consult the farmers? I do not know; I am just asking.

Hon. Valley: Please, please. Madam President, I was at pains to make the point that way back in 1997 when the first draft of the Bill was done, it went out for public comment. Public comment continued. The Green Paper was out; the White Paper was out. I made the special point that after the Bill was passed in the Lower House, the business community requested a meeting and we facilitated. Let me say clearly, if the unions had requested a meeting, if the farmers had requested a meeting, if Tom, Dick or Joe had requested a meeting, we would have done the same thing because we considered it extremely important legislation and therefore we wanted consensus.

Sen. W. Mark: Thank you. Madam President, that is the mentality of this regime. That is why you have so much fire in the country today and the place is burning. They are saying: "Do you know what? Come and talk to me and if you do not talk to me I do not need your intervention." That is a philosophy that is fraught with grave dangers. You cannot formulate policy, particularly public policy, without the intervention of stakeholders. That should be an ABC lesson for this administration. You do not consult with people. You did not consult with labour. And the Minister has admitted that had labour asked for consultation, he would have complied.

I thought that we are in this thing together, and if so, you have to call in NATUC, FITUN, the teachers' union, the PSA, because at the end of the day, workers, employees and ordinary people are going to be affected by these pieces of legislation. So I just do not understand why the Minister in this flippant way would just simply say: "All right, they did not call for a meeting; they had no need for me" and only the business community said: "I want a meeting", and he stalled the legislation and allowed it to lapse, and the new legislation is here and he has not yet taken the opportunity to consult with the labour movement.

We know a few developed countries dominate international trade and the world economy. We know that. Liberalization of trade in goods and services to us simply means that our markets are now open to international competition. That is what we talk about when we refer to liberalization of trade in goods and services, and the discipline of international competition is usually adequate to discipline

domestic economic players. It is our argument that sometimes international competition becomes so fierce to the point of ruining domestic firms and in that environment, international competition contributes to the demise, to the destruction of many a firm in our economy and they cannot survive in the face of this international competition.

So one wonders why it has taken the regime so many years, having gone through this programme of liberalization—trade liberalization, privatization or sellout of our national patrimony, deregulation of the financial sector. I guess that is to come, because that is not here fully. But that is the environment that we operated in for the last 20 years and it is in recognition of the intensity of international competition that Caricom decided to establish the common external tariff. Why was the common external tariff established? It was to safeguard and protect regional firms from the onslaught of international competition. So it is in the interest of these firms in the region to reorganize so as to confront and to handle international competition. In reorganizing their operations, if mergers are necessary, they must be allowed to merge. I find it very backward. Even the Americans who were responsible—the entire edifice of anti-trust legislation rests upon three essential foundations in the United States: the Sherman Act of 1890; you had something called the Clayton Act of 1914 and then you had the Federal Trade Commission Act of 1914. These were the first of three kinds of statutes that were introduced back in that period.

So here we are today—since then the American economy has been opened up to international commission. I am no free marketeer. I believe that this free market liberalized economy is causing a lot of destruction to many economies and many small societies and people are suffering as a result of this so-called free trade. I saw where my good friend and honourable colleague, Minister Christine Kangaloo, has put out a big brochure or a paid pullout in the newspaper over the weekend, trying to make consumers aware. But she does not understand that there is a supply side equation, and if you do not address the supply side equation, making people aware is a waste of time. You have to deal with the reality of Trinidad and Tobago and we have to deal with agriculture. That is the supply side that we have to deal with—food security for people. So to come and put out full-page advertisements and pullouts and telling people where corned beef is \$8 and \$9, that is wasting time.

Hon. Valley: You must grow some corned beef.

Sen. W. Mark: All I am saying is that we believe on this side that if the Government wishes to pursue this so-called liberalization of our economy and continues to anchor this society within the neo-liberal framework within this global marketplace, we must encourage our firms. If they need to merge, allow them to merge; if they need to reorganize, allow them to reorganize; if they need

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to engage in acquisitions, allow them to engage in acquisitions; if they need to be consolidated, allow them to be consolidated. All of these would be aimed at increasing their levels of efficiency so that they can become more competitive.

Minister Valley could correct me if I am wrong, but I understand the legislation governing the fair trading in Jamaica does not permit any kind of reference to mergers because Jamaicans have allowed their business community and the capitalist class in Jamaica, given the huge competition that they are faced with, with mega giant corporations, to at least strive and to survive. I understand that there is no provision in their Fair Trading Act that prohibits Jamaican firms from merging. They can merge; they can acquire; they can consolidate without any hindrances. Why are you seeking to put hindrances in the pathway of our domestic firms? I do not understand it. What is the rationale for that?

I get the impression that the hon. Minister is simply transplanting a foreign culture, a foreign value system, a foreign way of life on an environment that he ought to study more properly. I think he needs to go back to the drawing board on this matter. We should not be pursuing legislation in this country in 2006 which would frustrate national development, which would frustrate, what is called our natural economic response in the environment that we are in today.

The Minister must tell us if he is aware of a high incidence of unfair trade practices at this time. I thought the banks were involved in unfair trade practices; I thought the banks were involved in a cartel, a monopoly, but we realize that they have been exempt. The insurance companies are being exempt from this legislation. We do not understand the thinking behind the Government's policy at this time. Who are they protecting? Why are they protecting them and for what reason? We have Digicel and now we have TSTT going at each other's throats. A cell phone I paid \$1,000 for, I see it for \$39. I have lost almost \$1,000. All of that is going on, but yet still in the legislation they are being exempt. Why are they being exempt?

I would like to tell the hon. Minister, do not go back to Carib and Stag. That was way back. Tell us what is taking place now and what has caused the Government to bring this piece of legislation at this time when we have been operating to a liberalized environment for the last 20 years, and domestic firms are being disciplined by international competition. Why do you want to impose these new conditions on these organizations? What is even more amazing, you bring in a bureaucratic layer once again. You have something called the Fair Trading Commission. This creature is a bureaucratic arrangement and you are giving these people power. But do you know who is appointing them? It is the hon. Minister and his Cabinet.

So you want to bring a body that is supposed to have the quasi-judicial function and you want to give us the impression that they would be independent. But who would be appointing these people? It would be the Cabinet of Prime Minister Patrick Manning, and I am sure that the hon. Minister would have a big say in who are the people who would make up this commission. These are the people who would take instructions from the hon. Minister. These are the same people who would determine when somebody has crossed the threshold.

You are getting jail to be in business now! I never knew that getting involved in business and expanding beyond a certain percentage as we are told in terms of acquisition and mergers that you are going to call anti-competitive practices, that it was a crime. I knew it was a crime in the United States 110 years ago when Standard Oil, as he made reference to, had a monopoly over oil and they forced them, under the Clayton Act, to mash up that monopoly. But the Americans have gone past that 116 years ago, and we are in 2006 introducing backward legislation. Is that all the PNM could do? We should give our businesses the opportunity to strive, to grow, expand, merge, acquire and consolidate. Why do you want to hamstring the business community? Why do you want to hamstring entrepreneurs who would like to expand and grow? I find this is a most backward piece of legislation that we are dealing with here today.

Hon. Valley: Madam President, before my hon. colleague gets carried away, may I just remind him that it was in 1997 that Maxwell Stamp was appointed; that the Green Paper came out; that the first draft of this legislation came out in 1998/1999, a period in which his party was in office. So let me just remind him.

Sen. W. Mark: I just want to let him know, the time has changed, as you know. And as you know, Madam President, we have just witnessed some changes just a short while ago. You would have supported us before, but I see the time has changed. I see you are coming into our party to create confusion. I would deal with you and your cohorts on the hustings, but another time for that.

We are arguing on this side that the Government of Trinidad and Tobago is operating in a time warp. They are caught in a time warp. And you have, for instance, in many countries, including the United States—this company from Germany was just in a big acquisition; they acquired Chrysler in the United States; they produced the Mercedes Benz. These companies came together, one company producing high quality luxury goods at one end of the market; there is another company with a specific expertise occupying and taking control of the other lower end of the consumer market, and they came together for survival. There is something called survivability in this globalized, brutal, international

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marketplace and you must give companies the opportunity to merge and to acquire. It happened just recently in the United States and I am sure my hon. colleague is aware of it.

Our fear is that this Fair Trading Bill could clip the wings of domestic producers and make them more vulnerable to giant, efficient producers who have reorganized production a very long time ago. That is the danger. This Bill in its current form can clip the wings of our domestic producers. I believe that Minister Valley, my honourable friend, ought to go back to the drawing table and look at this piece of legislation carefully. I want to remind him that in the United States the anti-trust legislation that they brought was for a period. That was for a particular time when you talk about protectionism and they were trying to establish their presence as an immigrant nation and society and they brought these pieces of legislation. We have passed that stage. Therefore, I do not believe that in 2006 we should be introducing legislation to replicate what the Americans did back in the 1880s or, as I said, 116 years ago.

I want to tell the hon. Minister that if we are talking about competition, the bedrock of, as he said, a modern capitalist economy to generate efficiency gains, to produce high quality products and more efficient services at the end of the day to give to the consumers lower prices for higher quality products and services, where in this legislation could the Minister point us to where there are provisions to protect the consumer? Where? All I saw in this legislation so far as it relates to consumers in this Republic is in—if you could join me, Madam President, go to clause 5(2). It talks about the duty of the Commission to make available for the guidance of consumers. We do not even have a definition of what a consumer is in the legislation. It is to give the consumer general information with respect to their rights and obligations under this Bill or affecting the interest of consumers. I find this is rather vague. It does not tell the consumer what are some of those rights and those obligations. Of course, we do not have the regulations, and I want to advise the Minister very early that regulations should be subject either to an affirmative or a negative resolution of the Parliament and not just for the Minister to whimsically produce regulations. So we want you to be guided by that.

In the case of Jamaica, when they talked about consumer protection in their Fair Trading Act, they defined what they meant by that. In the Jamaican legislation, the Jamaicans were very clear when they spoke about legislation for the consumers. They were talking about things like misleading advertisements. “Royal Bank: Suck Eye Loan”, and they suck your blood. How were consumers going to be protected in Jamaica? They realized that these banks were misleading

people and they called them in and said when consumers are entering loans, they must put a fact-sheet and the language must be easy for the consumer to understand. When you go to a bank for a loan, they tie you up; they confuse you and the ordinary citizen just does not know what they are reading properly, and the Fair Trading Commission instructed the banks in Jamaica to deal with that, because it was in the legislation that misleading advertisements must be addressed.

They also included the non-fulfilment of warranty obligations and a host of other initiatives were taken. But Minister Valley has come here today; he has not given us any ideas as of how the consumers are going to be protected. All they seem to be concerned about is big business. You seem to be the headmaster of that class. What about the ordinary consumer? What about the ordinary people in this country whose eyes are being gouged as a result of high prices, misleading advertisements, their standard of living falling every day because these elements are just running rampage and the people have no rights? I thought that the hon. Minister would have put provisions to protect the consumers in this legislation.

3.00 p.m.

Sen. Enill: Madam President, I just need some clarification. The Bill before us is to protect consumers in circumstances where there is a view that the consumer is being held hostage, as a result of economic and monopolistic powers. If that is the focus of the Bill, for the last half hour of Sen. Mark's contribution talking about consumers, consumer protection and that the Government is not concerned about it, I really do not understand it. Could the Senator explain to me, how in circumstances where the purpose of this Bill is to protect the consumer, the consumer is not being protected?

Sen. W. Mark: Madam President, if I may, I would go to the Jamaican legislation because that is what I made reference to. It is the Fair Competition Act. Under Part VII of the Jamaican legislation, it talks about offences against competition. They detail and define these things such as price fixing in the legislation. We have it here, but it has not been defined properly. They talk about conspiracy and bid-rigging.

Sen. Enill: You are improving the Bill.

Sen. W. Mark: Of course, I am trying to improve the legislation.

Hon. Valley: Let me help you.

Sen. W. Mark: “Just now, Ken.”

Madam President: He is not giving way.

Sen. W. Mark: Madam President, misleading advertisement. We have double ticketing; sale at bargain price; sale above advertised price and obstruction. In other words, at this time, the legislation does not provide us with a kind of appreciation of how at the end of the day this will benefit us. The point is we should be able to define as in the Jamaican legislation, goods; groups of interconnected companies, price, service, supply, trade, consumer and employee, so that people would know what this is about and their rights so there would be no misinterpretation by the courts, when you have to take them to court.

“Go ahead, Ken.”

Hon. Valley: Madam President, the Jamaican legislation is 1993 legislation.

Sen. W. Mark: They amended it.

Hon. Valley: The model Caricom legislation is dated 2003. The Senator made the point that the Jamaican legislation did not consider merger. They did not consider merger but they considered consumer protection. What we will put in consumer protection legislation is what he is talking about. The Jamaican legislation will be further amended to represent the model Caricom legislation. The fact that it is named Fair Trading 1993, it includes consumer protection and it does not include anything about merger; they put in some things and left out some; we put in merger and we would put consumer legislation under the Ministry of Legal Affairs, in the Consumer Affairs Division where it rightly belongs.

Sen. W. Mark: Madam President, I understand what my colleague said and I will move on.

Hon. Valley is fully aware of this. The global marketplace promises no protection for small markets, and as such, small markets like ours must seek to protect themselves. Small enterprises are unlikely to be able to compete effectively in the global marketplace. This is why we call again on the Government to revisit this particular provision on mergers. I do not know if it is directed at specific people or forces. I find it very convenient for the Minister to exempt banks and non-bank institutions and the telecommunications sector. How can this legislation be fair when you are targeting certain enterprises in this economy whilst you are exempting others? This cannot be fair. This is unfair!

Let us have a level playing field. If you want fair trade, let us have fair trade. If you want to have competition laws, let us have competition laws to deal with all entities; not some and leave out others. We find that to be very interesting and suspicious.

I want to advise my colleague and friend that when it comes to this particular commission, it has a very critical role to play. This commission will determine whether my company has crossed the threshold; has engaged in anti-competitive practices and if I am in a monopolistic position and abusing it. Who will appoint this commission? It is the Cabinet. This commission would not be independent. It might be operationally independent, but structurally it would not be.

I want to indicate that the developed countries are placing burdens on our shoulders, heavier than we can carry. Where will the expertise come from to deal with this piece of legislation? Caricom has a negotiating machinery that negotiates on behalf of Caricom. When NAFTA was being negotiated with Mexico, Mexico had 500 to 1,000 professional persons negotiating on its behalf. The Americans had many more. In Trinidad and Tobago where will we get these technical resources and expertise? Are you going to import them as you are importing foreigners as the Ghanaians and Nigerians to voter pad? Where are these resources, both human and technical, coming from? That is an area we have some concern about.

I want to draw reference to clause 26(4). Five persons are making this commission. I find it quite curious that Minister Valley said in his presentation that two persons will make a quorum. I find that is a strange kind of math. I thought at least a minimum of three would make a quorum. I want to advise my friend to adjust that from two to three for us. I think that you made a mistake.

In clause 28(1), the appointment of any person as commissioner or at the termination of office would be published in the *Gazette*. People do not read the *Gazette*. We as parliamentarians get the *Gazette* six months after it is published. I ask the hon. Minister to make an amendment; as well as two daily newspapers and one in Tobago, because there is the *Tobago News*, you have to let the population know what is taking place. The *Gazette* is dead for us. We do not get it and when we do get it, it is too late.

If this particular commission is to have independence as we would like it to have, why not let their salaries be a direct charge on the Consolidated Fund because of the function this commission has to execute? That commission has to appear to be fair because there would be a perception of bias. I suggest that the Minister does not have to get involved in determining terms and conditions for these people.

Hon. Valley: You have to determine it before you make a charge.

Sen. W. Mark: I go to clause 43(7) which states:

“Notwithstanding subsection (6), the Commission may, with the approval of the Minister, vary its financial year.”

Why do you want this in legislation? We have established in law that the financial year would run from October to September. Why do you want to put in legislation to give a commission the power to vary the financial year? The commission should be guided by the law that guides the national budget of the country. There are reasons for that. I point out that to the hon. Minister because I found it inconsistent given what we have to deal with.

Clause 53(2) says:

“The Minister may on the advice of the Commission make Regulations for giving effect to the provisions of this Act...”

This Bill will have tremendous implications for business development in this country. I do not think that we should leave this whimsically up to any minister. Mr. Valley is there today. I might replace him tomorrow. Those regulations should be subject to an affirmative resolution of Parliament so that we would provide checks and balances in the whole process. I would like the hon. Minister to consider that particular provision as well.

I understand the dilemma that the Minister referred to when he made reference to Part VIII. I, like Sen. Prof. Kenneth Ramchand, was wondering why this Community Competition Commission was being given all this power. Why would this creature be able to determine and impose on us decisions that would have similar power to that made by the Supreme Court under the Supreme Court of Judicature Act, as though it were a judgment of the High Court? How can a bunch of bureaucrats sitting in Suriname take a decision and that is equivalent to a decision taken by the Supreme Court? I found that a bit strange. We do not have a lawyer with us at the moment. This is an area that I would like Sen. Dana Seetahal, S.C to comment on, whether this is ultra vires or a constitutional violation of the laws of our country.

Sen. Seetahal, S.C: What is that?

Sen. W. Mark: I am talking about clauses 48 to 50, Part VIII of this legislation, under the heading, the Community Competition Commission. I find the power of the commission to be very powerful and too dangerous. I would like the hon. Minister to pay some attention to this area because it smacks of an infringement of a citizen's rights.

There is another provision in the legislation that I would like to draw to the hon. Minister's attention. The Minister was clear in indicating that these authorized officers upon receiving a warrant from the High Court can enter your place. If somebody gets a warrant, I have no problem with that if it is done properly. He goes to the Magistrates' Court, gets a warrant and comes to search my premises. That is one aspect of it. You search my premises; remove documents and "yuh gone". Hear what is going on now. The commission now has the power to summon me. Clause 8(3) says:

"All persons summoned to attend and give evidence, or produce books of accounts, minutes of meetings, or any documents at any sitting of the Commission, shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey subpoenas issued from the High Court."

Madam President: The speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. T. Gopeesingh*]

Question put and agreed to.

Sen. W. Mark: Madam President, this is a bit worrisome. It is worrying where I am being summoned by a quasi-judicial body appointed by the PNM Cabinet, with the PNM Cabinet being as vicious and biased as it is today, we have seen them in full train. What implications would that have for business development in our country? Is that not a violation of my constitutional rights as a businessman? They will summon you and they are saying that you are bound to come! If I am bound to come to give evidence, is that not a violation of my rights? Does this Bill not require some special majority? This is a dangerous provision in the legislation. The hon. Minister needs to revisit this.

I saw that he was very smart. I must compliment him on this one. In Jamaica, the High Court struck down a decision made by the Fair Trading Commission of Jamaica because it was both investigator and adjudicator. You cannot sit in a court and judge your cause. The court ruled that unconstitutional. It was a breach of natural justice. I noticed that in clause 8(4) the Minister was wise. The clause reads:

"Before making any decision consequent upon any investigation, the Commission shall hear any person who is likely to be affected by its decision."

In Jamaica that was not in the law. They brought the person before the court and adjudicated on the case. You are judge, jury and executioner. I must compliment my colleague because this provision safeguards him from people going to the court. There are other provisions which we need to examine, as the constitutionality of this Competition Community Commission. What is the constitutionality of this commission in our jurisdiction; this invasion of my rights and privacy; summon me like a common criminal to court; tell me that I am bound to come; I am bound to give evidence and if I do not do that you can take actions against me? You are infringing my rights. The hon. Minister needs to examine this particular provision.

We believe that this particular piece of legislation faces several challenges. We do not have a culture of competition. This competition culture does not exist in Trinidad and Tobago. It will have to grow, emerge and evolve over decades to come. This particular piece of law that we are introducing would be very difficult and almost unworkable in many instances.

I do not know what kind of education programme the Minister with responsibility for consumer affairs is proposing to make people more conscious of competition. People are not aware of these things. You are going to impose a culture. This is why I made the point that we are transplanting foreign and alien cultures on our domestic environment without preparing our people for them. That is a recipe for failure. This legislation as much as I would like it to work, the actual ingredients for it to work, the foundation blocks that were needed in the first instance to build the structure have not been established. The character, nature and structure of our economy are alien to what they are talking about in terms of the provision of this legislation. I do not know why Third World leaders continue to play hansy pansy with the lives of people in Third World countries.

What we are introducing here was introduced 116 years ago in the United States and they have thrown out these pieces of legislation. They are not applicable because they have a more open economy which is subject to international competition.

I mentioned resource constraints. The Minister in the Ministry of Finance was muttering under his breath, as if to tell me that they would take care of that; there is no problem with resources and personnel. Time will tell. I have seen where we have passed legislation in Parliament that required a special majority. We were accused of being obstructionists and holding back legislation to deal with the criminals. Those pieces of legislation were passed almost two months ago and up to now they have not promulgated those pieces of legislation. You mamaguyed the population and gave the public the impression that the UNC was obstructing

you. We passed the Police Reform Bill, the Police Service Bill and the Police Complaints Authority Bill and those pieces of legislation are still not on the statute books and have not been promulgated.

I have worries and doubts about the ability and competency of this regime to translate this legislation into workable action. I have grave doubts about the ability to do so. This Fair Trading Commission has its work cut out for it. Under the reign of this PNM regime Trinidad and Tobago has become less competitive. Imagine we are bringing a law into this country's statute framework to create an environment where we are expected to have more competitiveness, so that we would have greater levels of efficiency so our people can gain welfare-wise. What is the reality?

When the United National Congress was in office and we were thrown out in 2001, we ranked No. 38 on the growth and competitive index in the entire world. Since the PNM came into office in 2001, in 2002, we dropped from 38 to 42. Even if more countries came into being the reality is showing that Trinidad and Tobago has collapsed in every major index measuring growth and competitiveness. In 2003, we moved from 42 to 49. We plunged again. In 2004, we went from 49 to 51 and at the end of last year, 2005, we moved from 51 to 60. Under the PNM we moved from 38 to 60. This PNM regime is hopeless. I do not believe that you can expect any real progress from this piece of legislation. This country is standing still and in many instances it is going backward under this regime.

Transparency and procedural fairness are major principles of a just and democratic system. I would like to emphasize that the Government has a duty to ensure that there is fairness in whatever it does. There is transparency. I am afraid that with the composition of this commission and the power of the Cabinet to appoint its members, I believe that business people have to be wary because the Government is about control. The Government is virtually a control freak.

Madam President: You have four minutes.

Sen. W. Mark: I do not believe that you will see much of this question of transparency. There will be agents and puppets of the PNM in charge of the Fair Trading Commission. We have made a number of suggestions for the Minister's consideration. We cannot object to a Fair Trading Bill. I emphasize whether this legislation is relevant, necessary and essential at this stage of our development as a nation, given what we have been doing for the last 20 years without this piece of legislation.

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We hope that the hon. Minister will recognize that the developed countries took several decades to accomplish the implementation of institutional reform, which is being thrust on our country, as well as many other developed countries which do not have the luxury of time, the requisite skills and technical resources. We believe that developing countries, Trinidad and Tobago included, are just not equipped to deal effectively with the issues of the global capitalist marketplace and all the relevant institutions which come with them. We are going through the motion today. The Minister will get his piece of legislation passed, but the implementation on a transparent and fair basis would be the testing ground of this piece of legislation.

Thank you.

3.30 p.m.

Sen. Dana Seetahal, S.C.: Madam President, may I say at the outset that my comments on this Bill would be constrained by the fact that I had assumed that they were dealing with the Local Government legislation today. Nonetheless, I have a few comments to make on this Bill. The first comment is that it may be that the Minister, in moving the Bill, is so seized of the matters which arise in this Bill that it is not as easy for him to present it so that the benefits would meander to the rest of us so we would understand and appreciate, clearly, what we, as the public, are getting from this Bill.

Madam President, what the average person on the Priority Bus Route would want to know, I think, from this Bill is how it is going to impact on matters like cable television monthly fees and on telephone rates because these are the things you think about when you talk about maintaining fair competition in the economy. How it would impact on banking fees; how the small business entrepreneur could be protected from bigger businesses when he seeks to go out and set up a business where his profit on the cost may be 2 per cent, but a much larger business could afford to take 0.1 per cent. Those are matters that I would think the average person would want to know about. He wants to know how this Bill would protect him.

I do not think that it has been made clear to us. I have tried to garner from the provisions of the Bill otherwise, what are the benefits. As Sen. Mark said, in the developed world they have gone somewhat further than this Bill and along slightly different lines in protecting their consumers and smaller business people. But be that as it may, Madam President, may I say that it ought to be the aim of legislation such as this, which seeks to protect, as it says in the long title:

“...to promote and maintain fair competition in the economy...”.

This ought to be the aim, which is to keep prices down. What is the purpose, at the end of it all in maintaining fair competition if not to have affordable prices for goods and services? I would imagine that is the ultimate goal.

Secondly, to ensure that smaller persons who do not have the advantages of the monopolies of the conglomerates could exist in the business. That is all that it is about.

Does the Bill assist in that? In some ways it does, Madam President, the provisions appear to do so. The concern of a number of us—I think it was expressed during the question period—was those bodies that are exempt, and that is in clause 3, and chief amongst them are banks and non-bank financial institutions. We are told that because there is a Financial Institutions Act, 1993 that it was not thought necessary to include them. Madam President, if I may say, that is no explanation. One would have expected that there would have been an amplification of that statement, perhaps, that in the Financial Institutions Act there is something there that could protect us from banks forming monopolies, as it were, and setting fees.

Madam President: Is that a cellphone?

[*Pause*]

Sen. D. Seetahal, S.C.: I do not know, maybe it was a special type of cellphone from the new telecommunications company; the new competition which is promoting fair trading in the country.

Moving to the banks, Madam President, not too long ago, there was an incident in the newspapers where a woman who was pregnant needed to go to the bathroom—I am sure everyone would recall because it made all the newspapers—and there was no bathroom, because banks do not provide bathrooms for customers. I guess the idea is that you are not going to be loafing around in the bank long enough to need a bathroom.

I think suggestions were made, and I believe the ministry even got involved, that perhaps there should be bathrooms but I believe they resisted. This is not the first time that governmental ministries have had to get involved in details in trying to assist the public. I well remember the previous Minister of Consumer Affairs to have said that he could ask but he cannot force, in many instances.

Madam President, it seems to me that in respect of institutions here that are exempt from this Act and which continue to be exempt, that the Government and those in authority would be in a position where they could beg but not force. One

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wonders why it is, in the absence of any explanation, that banks are exempt. It is not enough to say that they are under the Financial Institutions Act. There is nothing in this Act that I have seen that could require them to conform. It is an arguable question whether or not the banks have such influence on those who carve this legislation that they can have themselves exempted.

I think there has been no reason given, in particular, for the exemption of banks and non-bank financial institutions and I would like to hear something on that. I would like to hear more than that they fall under the Financial Institutions Act because it is an insult to our intelligence to say that, because that says absolutely nothing.

The next point was raised by Sen. Mark as to the commission created under clause 4 of the Fair Trading Commission Bill. His question really was with respect to the powers that are given to that commission; the powers in particular under clause 8 that is in respect of investigations, producing documents, summoning and attending as witnesses and the like. He asked, in particular, of the power to require persons to appear just as a High Court judge would have.

My understanding of what Sen. Mark asked in respect of that and also in respect of the community competition that is at clauses 48 to 50, the Community Competition Commission established under the Chaguaramas Treaty, he was asking whether the provisions in this legislation can be said to be clearly constitutional. In other words, he is asking whether, perhaps, they are unconstitutional.

Madam President, it appears to me that in the case of the commission, the commission is being given wide powers similar to the Environmental Commission and other commissions that we have appointed over time and which we have given quasi-judicial powers.

In the case of the Community Competition Commission it appears to me that that commission has both powers of investigation—under clause 49 it says that it would have power to undertake investigations and also power to deliver a judgment. In other words, this commission has inquisitorial powers whereas our system is adversarial. In our system, Madam President, you would have one body doing the investigation and another body making the finding. Under clauses 49 and 50, both clauses of the proposed legislation, the Community Competition Commission would have powers to investigate and to make a decision which

would be binding as a judgment. It seems to me that insofar as the Community Competition Commission, at least, and its powers under this Bill, one needs to look at that and see whether it is consistent with the Constitution in all ways insofar as the separation of powers is concerned and insofar as the dual role of that commission is concerned.

In respect of our local commission, most of the legislation that I have seen—there is other legislation I would like to hear about—where a commission is established with quasi-judicial powers, it is usually passed with some kind of special majority. Perhaps the Attorney General may care to respond to these concerns of Sen. Mark in respect of that, and of my concerns in respect of the Community Competition Commission.

Madam President, those are my comments on the Bill; those are the comments that I have been able to achieve in the short time.

Thank you very much.

Madam President: Is there anyone on the Government side who wishes to speak? [Pause] No? Okay then Sen. Dr. Gopeesingh, you may proceed.

Sen. Dr. Tim Gopeesingh: Madam President, this Bill that the hon. Minister has brought in, the Fair Trading Bill, 2006, has serious implications for the business community and for consumers in Trinidad and Tobago. I am a bit unsure of whether this has been studied carefully in the context of what is happening, globally.

Before going into the details of some of the clauses in this Bill there are some interesting perspectives which have to be taken into consideration. First of all, we are an isolated small country in the Caricom community—[*Interruption*]*—well, we are a small country in Caricom with five million English-speaking people—bringing in the Spanish-speaking countries, we are more than 15 million—but we are operating within the context of the Treaty of Chaguaramas in terms of trade. We as a Caricom community are operating in a global competitive market in competition with major players around the world and the Caricom community cannot even raise its head in terms of trade and being competitive to the developed countries.*

There are the G-8 countries, which have locked themselves together and because they have become monopolistic the G-23 countries came into being and began to put a lot of questions to the G-8 countries led by Brazil, generally, because they found that the G-8 countries were monopolistic as far as trade was concerned and a number of the WTO talks were stalled as a result of the monopolistic trade policies exercised by the G-8 countries. We are not talking about just the G-23 countries.

In this part of the world, in the western hemisphere, the hon. Minister is quite aware that there was a move to bring on the FTAA—I am bringing this in, Madam President, in the context of mergers and acquisitions and the question of what is considered monopolies and the benefits or the negative effects to accrue from monopolies. Here in the western hemisphere the FTAA countries from the north to south to Terra del Fuego, 34 countries have been thought to be coming together under the FTAA and the Minister made a number of pleas to have Trinidad and Tobago as headquarters for the FTAA. The FTAA was really to open up the markets for trade and trade liberalization, so each one of the 34 countries would have its trade policies. But then if we were to join the FTAA we would have to come under the arrangements of the FTAA when we speak and do trade with other major blocs. A number of major blocs have emanated; the European Union, which is one of the largest trading blocs in the world with more than 500 million people, controls more than 60 per cent of trade in the world.

In the western hemisphere you have the Andean group, Mercosur group and you have the Caricom group, which is very small, and then you have a number of bilateral treaties and arrangements in terms of trade and multilateral arrangements. The United States has gone on, it is not bothered with FTAA anymore. I am sure that the Minister knows that the FTAA is not going to come on stream. The United States is not thinking about bringing on this FTAA because it has gone on to deal with countries on a bilateral basis and it is signing trade treaties with a number of the individual countries in the western hemisphere. So this FTAA is not something that is going to be on the horizon shortly at all. We believe this FTAA is not going to come into place. All the things that we have lost as a result of trying to bargain for Trinidad and Tobago to be the centre for FTAA; even the little cricket tournament that is coming in World Cup 2007 where we allowed the World Cup finals to be given to another country so that we can get the FTAA headquarters in Trinidad and Tobago, has been lost because the United States has moved away. President George Bush is not going with FTAA.

Madam President, where is Trinidad and Tobago in relation to that? When we look at Trinidad and Tobago's economic horizon, most of it is captivated by the oil and gas sector. Now, there are monopolies there and the first set of questions I want to ask about monopolies and mergers are: Would this piece of legislation incorporate foreign companies that are practising businesses in Trinidad, particularly, in the energy and gas sectors? That has major implications, Madam President. For instance, in the gas reserves which we have in Trinidad and Tobago, which are depleting and which probably would not last 15 years, how

does this Fair Trading Bill affect the monopolistic energy companies? An example is Atlantic LNG where you have about four companies coming together—I might be educated a little more on it because there might be more than four—Repsol, BP, British Gas and with our NGC in Trinidad and Tobago. Are we going to see monopolies operating there now because you have mergers of these four international enterprises coming into Trinidad and Tobago and monopolizing the gas situation to the detriment of the people who, according to this, would be considered consumers? Would this Fair Trading Bill—we know that gas is not a trade in itself—incorporate some of these international companies which are operating in Trinidad and Tobago, which are merging together to become more cost-effective so that they could harness the natural gas we have in Trinidad and Tobago to the benefit of their profits and to the suffering of the people of Trinidad and Tobago? This is a very important issue that the Minister must incorporate in his thinking on this Bill, whether it is going to incorporate foreign international companies and multinational corporations which are doing business in Trinidad and Tobago on a macro scale and enjoying maximum profits from a small country as Trinidad and Tobago.

When we talk about other monopolies and so on, they are really not affecting the citizens of Trinidad and Tobago to the extent that these international companies which form mergers and create monopolistic situations; they affect Trinidad and Tobago and they affect the people because they are harnessing something that is not sustaining—a non-sustainable energy supply taking it away from Trinidad and Tobago.

Madam President, I would like to invite the hon. Minister to look at this aspect because I do not see anywhere in this Bill there is a question of dealing with international companies operating businesses in Trinidad and Tobago. When we talk about businesses here; we are a trading country, we are not a manufacturing country but we have manufacturers as well. Most of our economy is really on the energy, oil, and natural gas sectors. We have a number of international companies here that we need to look at critically. Why do they merge? Why would Repsol merge with BP and British Gas and all these companies? That is a merger. If this Bill seeks to prevent mergers and being anti-competitive, it is not providing any information for us on the foreign companies coming and utilizing a monopolistic situation in harnessing energy from our country. That is the largest aspect of the Trinidad and Tobago economy.

The manufacturing sector really does not contribute very much in terms of percentage of the GDP, but it still does to a certain extent—*[Interruption]*—I think 12 per cent is the most. Madam President, I would want to proffer that this Bill

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would be counterproductive to the manufacturing sector in terms of if they want to improve their efficiency and effectiveness as manufacturers. In this Bill they talk about vertical and horizontal integration. The vertical integration takes place with suppliers and consumers and the horizontal integration is with companies.

Madam President, if a manufacturing company cannot merge with a supplier to bring out—in manufacturing terms—a just-in-time situation, which everyone in the manufacturing sector knows that it is an important prerequisite for efficiency—

Hon. Valley: Could the Senator give way?

Sen. Dr. T. Gopeesingh: Sure.

Hon. Valley: Madam President, may I, again, advise my colleagues that the Bill does not stop mergers; it does not stop monopolies. What is illegal is anti-competitive behaviour. That is what it is. Nobody is stopping mergers. In this world we want big, but we want big that is fair.

Sen. Dr. T. Gopeesingh: That is the major question to be determined in terms of the operations of this communication. Who determines fairness? Who determines big? Who determines the marketplace? Who determines 40 per cent of the marketplace? Who determines whether a company is more than \$50 million in terms of a merger? All these questions have to be answered.

Madam President, to come back to the original point I was making, the question is: If manufacturing companies feel operating by themselves is not going to be efficient and to deal with the global market and the free trade liberalization that is sweeping through the world, they are not going to be able to be competitive in terms of export by being small manufactures, the only thing to bail them out—and I am sure the hon. Minister knows this—is for them to merge; for them to acquire other manufacturing companies. So acquisitions, mergers, joint ventures, they must have these to become major players in manufacturing; so whether it is a vertical integration with suppliers that is a necessity as well. When this commission is established somebody goes and makes a statement to the commission and writes a letter saying that this manufacturing company is anti-competitive. This commission has the ability now to go in and summon people—which I will come to shortly—it stops the whole process to a certain extent. Now, they are forced to go through the legal process, energy and time is consumed in fighting of the commission in the courts and they lose their focus in what their real thing is in terms of manufacturing.

Madam President, I want to indicate that I feel this legislation delivers hammer blows to the small, medium and large manufacturers in Trinidad and Tobago because on the economies of scale and the economies of scope the large businesses are really small players in the international world.

This Bill here obviously will deliver a lot of hammer blows to manufacturing companies and to businesses which want to be competitive in the international economy because they will not be cost-effective because from the time they think about merging and acquisition, this commission would be down their throat and it is going to be a negative aspect for them. So the manufacturers are going to be affected and if they are affected, consumers would be affected. If the manufacturers are able to manufacture something which is cost-effective and the economies of scale are lower therefore to—

Sen. Enill: Could the Senator give way? Just so that I understand, could the Senator tell me, with respect to the statement he is making relative to mergers and the lack of mergers, how does that fit in with clause 13(4) of the Bill which talks about the commission, before granting permission basically satisfying itself that the merger that is being contemplated would not affect competition or would not be detrimental to the consumer? He is arguing that this is not permissible and that lack of mergers will destroy the environment. The Bill itself says that there can be mergers except that the commission will satisfy itself that the mergers will not do certain things. I am trying to understand the point that he is making relative to—

Sen. Dr. T. Gopeesingh: I am not indicating that the merger is going to be a detriment. What is happening is that the commission—if I want to merge my company, I am doing manufacturing, company A with company B, I must have the freedom from being held back? If I think my business is not succeeding and that one is and by joining together, both of us would be able to succeed better in the international market, why should I have to be constrained—business A and business B—by a commission, which I want to proffer, would not have the capacity to deal with this on a national basis? Sen. Mark raised the question of the human resource capacity and capabilities to deal with this.

4.00 p.m.

I want to merge and B wants to merge. We have to go to a commission to apply for a merger. This process may take months. It may take years. They want to assess what is 40 per cent of the market share. They would want to know how much one's business is. Who would determine what my business value is and what would determine what business B's value is? How can one come up with the

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\$50 million? *[Interruption]* This is why. Why are we introducing something that is not necessary at this time and you are going to stymie the ability of the business sector for growth when you know you are dealing with a monopolistic situation around the world where trade liberalization is forcing developing countries and manufacturers into the back bench and the monopolies that are being—
[Interruption]

Hon. Valley: You have to do it because one has to ensure that those who break the law must be punished. Yes, you want mergers. You do not mind monopolies but if they abuse their power, there must be some system in any civilized society where you can punish them and that is all we are saying. You can merge, you can go about your business—nobody is going to interfere with you. As I said, most of us do not like to have to file integrity commission reports but we have to do it, and as long as we are doing our business above board, we have nothing to fear. It is only when one abuses the process then one has something to fear.

Sen. Dr. T. Gopeesingh: Madam President, and hon. Minister, it seems as though the business of this Government in any legislation is one of prosecution and persecution because in the mindset of this legislation the hon. Minister is alluding to the fact that they just want to prevent abuse and, therefore, prosecution and persecution. But it is not necessary. That is not necessary. If company A merges with company B, do you think they want to abuse the process in terms of their manufacturing competence, capability and capacity? Not at all! They want to ensure they are players in the world in terms of when they manufacture their products here that they could sell it on the international market. And you want to prosecute the business community for that? That is totally unacceptable, hon. Minister. And if this legislation is meant to prosecute the business people and the business sector for having mergers, acquisitions and joint ventures and so on, so that they would be more cost effective, it is a shame on this Government to bring this piece of legislation.

The next question is: This commission, I know it reports to the Minister but in terms of commissions in Trinidad and Tobago, there is a plethora of commissions which are not working independently. We see it from day to day; we see that they are ineffective and inefficient. We see the Integrity Commission is not working fairly; we see the Teaching Service Commission that is not effective, the Police Service Commission that is not working effectively. Here we are bringing another commission appointed by the President. We have had the undeniable facts that these commissions have not served Trinidad and Tobago well—and you want to

bring in a commission now. Who is this commission going to report to? This commission is looking after enterprises beyond \$50 million and more, so it is a big commission. You can stop businesses; you can stop mergers, acquisitions to the value beyond \$50 million. Now, you are stopping major players in a society where we are trying to encourage development and if we try to stultify and stop development, we are not going the correct way. So here is a commission—this Bill says nowhere who this commission is going to report to.

When the Minister is answering, he has to give to this House the undertaking of whom it is responsible to. Besides the hon. Minister, is it going to be responsible to a joint select committee of Parliament which looks after the 89 state enterprises and statutory authorities, or is it going to be responsible to the joint select committee looking after commissions? I would like to recommend that it must be accountable to the Parliament through one of the joint select committees and there is no way in this Bill which says it is accountable to anyone. That is a major consideration.

Who is going to scrutinize the work of that commission? You have seen that commissions—the Integrity Commission has been working—they are doing whatever they want to do. They have so many things to report to them, the CDAP issue which the Public Services Association brought for Minister Rahael; they have the National Lotteries Control Board to report and they are not doing anything. I am saying this commission must be responsible to the people of Trinidad and Tobago and the Parliament is responsible to the people of Trinidad and Tobago and, therefore, this commission should be responsible to the Parliament.

Hon. Valley: Madam President, if the commission reports to the Minister of Trade and Industry, and the Ministry of Trade and Industry reports to some select committee, it seems to me that there is already reporting to Parliament because when the joint select committee examines the Ministry of Trade and Industry, it will examine every institution that falls under the Ministry of Trade and Industry.

Sen. Dr. T. Gopeesingh: It is a commission, Madam President, and I would like to indicate that my thinking on this is that this commission should report to one of the joint select committees in Parliament, not because it comes under the Minister, and the Minister has to report to a committee. I think it should be made specific that this should be reporting to one of the joint select committees of Parliament. This is very important.

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Madam President, there is one more point and a major issue before I go on. The Government has to be accountable to the people of Trinidad and Tobago, and there is separation of powers between the Judiciary, the Executive and the Legislative powers. We are the legislative, we are held accountable by the people, not so much in the Senate, but in the Lower House and the Judiciary has to be accountable to the people as well in terms of how they look at laws and how they punish people. So everyone has to be accountable in this country, and if the Government believes that it must not be accountable by doing the things that they continue to do on a totalitarian basis and in the way that it is non-accountable to the population as we see from day to day—I would not go into examples now—they are on the wrong track and obviously the people would get fed up and remove them when the time is appropriate.

Madam President, the question of the appointment of commissioners goes back to the President, but the President basically would appoint those commissioners mostly on the advice of the Government and probably Cabinet and, therefore, here we see another situation which smacks of the necessity for constitutional change. We are bringing in a commission that is supposed to be an independent thinking authority/body, that would be looking at businesses, trade and a number of things in the national economy but here it is going to be appointed basically by a Cabinet. I just want to draw an analogy.

Members of the Cabinet may feel that this business is not going to be operating and they may have a grudge against a particular business and, therefore, they are going to take them to court. You are right. So the question of appointment of these commissioners should be independent commissioners. The appointment of these commissioners should take place on the advice of the Leader of the Opposition and on the advice of the Government. Here you are appointing five commissioners who are supposed to be independent—[*Interruption*] you can take a chance any time with any opposition leader, because I think we mean fair play and we want to see some independence. We have worked with you on the Police Reform Bill—Madam President, we have worked with them on the Police Reform Bill and as Sen. Mark indicated, they wanted it all the time. We gave it to them and two months after it has not been promulgated.

The appointment of these commissions need to be looked into very carefully and we prefer that the appointment be on the advice of the Opposition and the Government Benches. Now I go into the clauses of the legislation.

The Fair Trading Commission is to promote and maintain effective competition in the economy, and to ensure that competition is not distorted, restricted or prevented in Trinidad and Tobago to the detriment of the community. The Community Commission under one section of the Revised Treaty of Chaguaramas—we are not certain whether the Caricom Community has

established rules, regulations and practices for the conduct of that Caricom Commission. How does the Free Trading Commission in Trinidad and Tobago relate to the rules, regulations and practices of the Caricom Commission? Where are those rules and regulations of the Caricom Commission? And the regulations for this Commission have to be brought to the Parliament—this Minister is yet to make these regulations.

I assumed that the Minister would have brought these regulations around so that we would be privy to the regulations, so that we could be introspective into what the regulations are, so we could determine whether they are fair regulations. So on the other hand we are uncertain as to what is existing in the Caricom Commission in terms of their trading practices, and here it is we are debating a Bill, unsure of our regulations, far less, how do we compare our regulations which are non-existent at the moment to what Caricom existing arrangements are and their regulations. So that is absent at the moment.

Clause 3 of the Bill states in excluding:

“...the application of the Act to activities of employees, collective bargaining, activities or professional associations and other business activities,”

In the context of globalization mergers are important.

I make the point. You want to exclude the Telecom Authority.

Clause 3:

“The Act shall not apply to—

- (e) activities of professional associations designed to develop or enforce professional standards of competition reasonably necessary for the protection of the public;”

If you want to exclude those, you will have to forgive me for mentioning this. There are a number of professional companies in Trinidad and Tobago, Madam President, you know it for yourself, law companies which are operating in a monopolistic situation in Trinidad and Tobago, and it is the large firms which are monopolizing the legal practice in Trinidad and Tobago where there are almost 1,200 lawyers and the large firms—the lawyers in this House will tell you in Port of Spain, the three or four large firms have monopolized the entire legal situation so that when you have to have a deed or something done or you have to apply for a loan, they tell you which law firm to go to.

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My wife is an attorney for 33 years and my wife was told by certain banks when you go for loans you must go to this law firm. She would say: “Are you crazy?” “I am an attorney and you are sending me to a law firm. Check yourself.” They want you to go to that law firm to deal with it before and after. So there is a monopoly that exists in Trinidad and Tobago in terms of the large legal firms. This legislation should be brought in to look at this issue as well. *[Interruption]* You are excluding them for professional associations.

Hon. Valley: Professional association is not a law firm.

Sen. Dr. T. Gopeesingh: Suppose somebody brings something to the Law Association and says that these legal firms are monopolizing the legal situation in Trinidad which is going to be a fact when this legislation comes in—they write to the Law Association and say there is a monopoly existing in the legal circle. *[Interruption]* And the person indicates to the Law Association and the Law Association says yes, there is a genuine case of concern. We cannot go now to the commission because they are excluded. The Law Association would be excluded. I want to indicate—*[Interruption]* I will not give way. You will answer when the time comes. You are disturbing my trend of thinking. The point I am making under clause 3(1)(e); it is quite clear that you must not exclude professional associations. If you want to bring in legislation you must include them as well. Because you could have monopolies and monopolistic situations as far as that is concerned.

Subclause (1) (g):

“Companies which fall within the purview of the Telecommunications Authority Act, 2001.”

So you have companies like Digicel and Laqtel, TSTT, coming under the Telecommunications Authority Act, 2001. Trinidad and Tobago was clamouring for the deregulation and for the de-monopolization of the telecom industry. The companies have come in now and one has seen the prices of the product falling because you have opened up the industry. If you exclude the telecom authority as far as telecommunication services is concerned, do you know what a major player the telecom industry is in the national economy?

The world is moving in terms of services and a lot of money is being generated in terms of services, and the communication aspect is a very critical part, so why do you want to leave out the telecom authority from your commission when your commission should be looking at that? If you really want to deal with mergers and acquisitions and

joint ventures and so forth so that the community and the consumer would benefit, the telecom authority ought not to be left out of it. They should be included in it because we have seen it too long.

What we are witnessing now—look at the cable companies: Columbus cable. Columbus cable has monopolized the entire Trinidad and Tobago and almost 90,000 consumers are caught under the Columbus cable company. Why are you leaving them out of this commission? They ought to be looked into. Because they can do whatever they want, they can raise their prices, the poor person has to suffer because they cannot afford. And do you know what? They take the major stations, our national stations, and put them under their cable company, and they are preventing you from looking at your own national stations and telling you “I am charging you \$190 per month, and they are now restricting you to two boxes in your own home. They are telling you how many television sets you may have in your home. That is totally unacceptable and you, hon. Minister, want to leave out the Telecommunications Authority from this commission. No way at all!

The other point is in clause 3(2):

“The Act shall apply to public utilities within the meaning of the Regulated Industries Commission Act...”

Hon. Valley: Madam President, on a point of order. My point of order is that the Member is misleading the Senate because the Telecommunications Act regulates and provides similarly. The same thing the Act is providing, the Telecommunications Act provides for anti-competitive behaviour and, therefore, there was no need to have the Telecommunications Authority under this legislation. It is taken care of under that legislation. [*Crosstalk*]

Sen. Dr. T. Gopeesingh: If the hon. Minister says that the Telecommunications Authority Act has its own regulations to take care of situations like that, I want to draw him to subclause (3) where it says:

“Where a merger or an anti-competitive agreement would fall within the purview of the Commission in circumstances where any of the companies involved is a public utility the Regulated Industries Commission shall not make any decision before it consults with the Commission.”

We go back to (2):

“The Act shall apply to public utilities within the meaning of the Regulated Industries Commission Act, 1998 save that the responsibility for enforcement of the Act in respect of public utilities shall be that of the Regulated Industries Commission.”

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So here they are venturing into bringing the Regulated Industries Commission under the purview, and the Regulated Industries Commission as an independent commission which can deal with situations in terms of rises in prices of electricity, telephone and so forth, or electricity and water. Here they have ventured into moving into the Regulated Industries Commission Act or the commission and on the other hand they want to stay away from the telecommunications industry. Is it by design, by purpose? Look at the confusion that this Bill is creating.

They said the Act shall apply to public utilities within the meaning of the RIC, save that the responsibility for enforcement of this Act in respect of public utilities shall be that of the RIC. So the responsibility for enforcement is with the RIC. But they come back in subclause (3) that the RIC shall not make any decision before it consults with the commission. So you are saying that the enforcement rests with the RIC and then you are coming back and saying that the RIC cannot make any decision before it consults with the commission. That is massive confusion. So you have one body that is independent, the RIC wants to go a particular way, the commission wants to go a particular way, RIC wants to enforce something, and RIC has to go back to this commission.

I think it is a schizophrenic who has drafted this legislation because it is a nice thought. When there is massive confusion, schizophrenia is when you move from one thought to a thought five ways down the line and you skip the intervening thoughts in-between. *[Interruption]* I pay due respect to the legal draft people, but the intent of the Bill is incorrect. I pay respect to the legal draft people because they are doing a job for the country and I respect them, but this legislation is very confusing and the Minister should have guided them on it. And if the Minister's advisors have not guided them properly they should take note. Very important! *[Interruption]*

A very important point under clause 6:

“For the purpose of discharging its function under section 5, the commission shall make an application to the Court for the determination of a contravention of this Act.”

According to the major heading, clause 5 would specify the functions of the commission which are generally to undertake investigations in relation to the conduct of business activities in Trinidad and Tobago. They are venturing into dangerous territory, because what we have seen recently with one of the largest conglomerates in Trinidad and Tobago, the Caribbean and internationally, is that they have been searched at whims and fancies, and one of the largest members of the Caricom Community in terms of business, he has been humiliated by this State. You want a commission to go and be able to search this man's premises?

Madam President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes.
[*Sen. W. Mark*]

Question put and agreed to.

Madam President: Hon. Members, we are going to take the tea break but before we continue, Minister Yuille-Williams needs to give a reply to a question that was asked by Sen. Mark.

ORAL ANSWER TO QUESTION

Trinbago Unified Calypso Organization (Auditor General Reports of)

[*Continuation of question No. 59*]

Sen. J. Yuille-Williams: Thank you, Madam President. I would just like to give some additional information to the honourable Senate especially to Sen. Wade Mark. In a question he asked me about the name of the firm. I will read what I have here.

The financial statements of Trinbago Unified Calypsonian Organization have been audited for the years 2002—2004 by Messrs. Hakim Ahamad and Company, Chartered Accountants and are readily available for the public's perusal in a booklet format.

Madam President: Hon. Senator, I do not think it makes any sense starting your next 15 minutes with two minutes before the tea break. We will take the tea break and when we come back you will have your 15 minutes.

4.28 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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Sen. Dr. T. Gopeesingh: Madam President, I left off on the question of clause 5—undertake investigations in relation to the conduct of business activities. That is in close coordination with clause 9, which would empower the commission to authorize officers to search any premises with warrants issued by a magistrate for the purpose of inspecting and removing documents related to its investigation.

We have seen where people have gone into big businesses with the wrong warrants and the courts have had to adjudicate that the warrants were not correct. That is the case with Mr. Duprey.

Sen. Jeremie: On a point of clarification. There have been two warrants, as I understand it, executed against Mr. Duprey—one a year ago and one quite recently. You can be quite certain that the one that was executed quite recently was executed in accordance with due process; that every “i” was dotted and every “t” crossed, scrupulously and meticulously so.

Madam President: I do not know why we are going there. Let us come back to the Bill, please, and not personalities.

Sen. Dr. T. Gopeesingh: Madam President, the hon. Attorney General has alluded to the second one, but he did not speak about the first. I am not going into personalities; I am dealing with the issue of the warrant. He knows that the State lost the case in terms of the warrant in the first one.

Sen. Jeremie: Madam President, again on a point of clarification. The State did not lose any matter. Information came to me that the warrant was not properly obtained and I conceded the case, so that there was no litigation whatsoever. In accordance with my duties under section 4 of the Constitution to guard citizens’ fundamental rights, I instructed the police that they were not to go into person’s property or otherwise without due process and without obtaining proper warrants.

Sen. Dr. T. Gopeesingh: The simple statement is that warrants were issued wrongly. They went into people’s premises. They were not correctly issued and the individual who was at the mercy of the State’s intervention made claims to the fact that his fundamental human rights were breached by that warrant and the State had to settle in court. So we have to be very careful about warrants being issued.

Clause 9 would empower the commission to authorize officers. Who are these officers? Is it a clerk of the commission? It has not been named who these officers are, therefore that should be an important part of this Bill. Then it talks about searching any premises with warrants issued by a magistrate. Madam President, a Justice of the Peace is considered a magistrate. Does the Minister want to tell this Parliament that a JP can issue a warrant to search the premises of a business that is greater than \$50 million in worth at the whims and fancies of an unauthorized officer, someone who may be a clerk? This Bill does not indicate who the authorized officer is, so it could be a clerk, being issued a warrant by a JP to search the premises of a business that is probably \$1 billion, with international connections. How would this go down? At the whims and fancies of the commission; they do not have an authorized officer—

Sen. Mark: This is a political commission, appointed by the Cabinet.

Sen. Dr. T. Gopeesingh:—by the State. So you do not know who these authorized officers are and they can go into any business and inspect anybody's property, remove anybody's property and interfere with the fundamental human rights, when these people may have such large international connections in the business sector, which would impugn upon their character and have major repercussions for their business. I say that they should name the authorized officers.

Sen. Mark: It is an Idi Amin approach.

Madam President: Sen. Mark, you are a little loud. Will you allow the speaker to speak!

Sen. Dr. T. Gopeesingh: He is not disturbing me. [*Laughter*] They cannot go to a magistrate. I want to indicate to the hon. Minister that on a magnitude like this, they should go to a High Court judge for a warrant, not a magistrate, which would include a JP, for a business which may be a multimillion dollar one.

Now clause 14 states that:

“...prohibit all anti-competitive mergers but would enable the Commission to grant permission for mergers of enterprises if the proposed mergers are not detrimental to the consumer or to the economy.”

Who determines what is detrimental to the economy? How is that determined? What criterion is being used? Is it a willy-nilly type of determination? There must be some guidelines, some rules or some regulations enshrined in this Bill for us to determine whether something is detrimental. What you may consider detrimental, Madam President, I may not. So there is a commission with individual members, which is basically not an independent commission. They may come with their own thing and say something is detrimental and decide to move in on it. This is the arbitrariness of this kind of legislation. That has to be looked at very carefully.

Clause 19 indicates anti-competitive agreements or practices. Clause 19 would enable the commission to enter into agreement with businesses with anti-competitive agreements before the coming into operation of the Act to phase out and terminate the agreements. Is this retrospective legislation? Is this legislation that will go into people's past business where they have had mergers, joint ventures and acquisitions and tell them

that they have to phase out their joint venture and acquisition? Are they going into businesses that are working very well to say that they now have to break up their whole business organization? I want the Minister to clarify that, but he must not get into my time because I have limited time to make my points.

Madam President, that whole retrospective activity in clause 19 is not to be accepted. Very rarely in the world will the learned lawyers tell you that the courts look at legislation that is retrospective. Even the European Union with all their commissions does not go into retrospective legislation and issue edicts and so on before the court.

Hon. Valley: On a point of clarification. Clause 19 says—it is clear—that if on the coming into force of this Act, an illegal merger or monopoly exists, then the commission can sit and talk with the parties so that they can correct the error. That is not retrospective legislation. It says:

- “(1) Where an enterprise is party to or engaged in an anti-competitive agreement or practice before the coming into force of this Act—
- (a) the enterprise shall notify the Commission within one month thereafter of the details of the anti-competitive agreement or practice;
 - (b) the Commission may apply to the Court for an Order to determine the agreement or practice.
- (2) At any time before the Commission applies for an Order under section 44(1), the Commission and the enterprise may enter into an agreement as to the manner and timetable, for the phasing out or the termination of the anti-competitive agreement or practice.”

Sen. Dr. T. Gopeesingh: He is taking my time, Madam President. Bear that in mind, please. They are both taking my time. I am quoting from clause 19 here. He is probably seeing something later on. On the third line at the bottom of page 3, clause 19:

“...would enable the Commission (to enter into agreement) with businesses (with) anti-competitive agreements before the coming into operation of the Act...”

—that is retrospective—to phase out and terminate the agreements which were before the Act.

If the hon. Minister is unable to read clearly and interpret English, I am sorry; something is wrong because it is very clear and concise.

Clause 20 would provide that:

“(a) an enterprise has monopoly power in a market, if by itself or together with an interconnected body corporate, it occupies such a position of economic strength as will enable it to operate in the market...”

Is that not a desirable thing that a company must operate with economic strength, so that it would be able to operate in a market? You want to stop that? How can a company operate if it does not have economic strength? Something is wrong with the wording at clause 20. If you have economic strength, this is the most desirable thing for a business enterprise. So the Minister wants to say that it is monopoly power if a company is operating with economic strength? How could that be?

Clause 21 provides that:

“21. An enterprise which has monopoly power, abuses that power...”

Abuses that power—what determines abuse? Who determines abuse? Is there something specific to tell you that this is an abuse? Abuse is a very wide and broad word. If you look at the meaning, it is a wide and broad word. If you look at the meaning of abuse in the dictionary, it has a wide contextual framework. Who is to determine abuse? He said that an enterprise that has monopoly power abuses that power. Where are the guidelines, rules, regulations that will guide that whole question of abuse of power?

Hon. Valley: You are reading half the clause. Why are you doing that?

Sen. Dr. T. Gopeesingh: No. Let me read:

“if it impedes the maintenance or development of effective competition in a particular market.”

Who will determine abuse of power?

Clause 22 says:

“However an investigation would not be initiated unless the Commission is satisfied that the enterprise concerned controls more than forty per cent of the market.”

Would this commission have that human and technical capacity within themselves—

Madam President: Two and a half minutes.

Sen. Dr. T. Gopeesingh: Madam President, they interrupted me so many times before.

Madam President: [*Inaudible*]

Sen. Dr. T. Gopeesingh: Let me sum up now then.

The 40 per cent is indeterminable. Who determines it; they do not have the technical expertise; they do not have the human capacity, so this is flawed in its entirety.

In summary, this legislation is delivering hammer blows to small, medium and large businesses which is totally unacceptable in the context of the Trinidad and Tobago economy. It is restraining their capacity for growth, efficiency and effectiveness and competitiveness in the international economy and therefore this is not an acceptable piece of legislation, when we are looking at developing businesses in Trinidad and Tobago. This should incorporate the telecom companies in its perspective.

We must analyze the foreign multinational energy companies in terms of what the commission wants to do. It must look at professional associations. Warrants should be obtained from the High Court and not from the Magistrates' Courts and authorized officers should be named.

Madam President, thank you very much.

Sen. Basharat Ali: Madam President, this Bill was supposed to be taken on April 18, 2006, the historic sitting that lasted seven minutes, so we did not take it. However, I tried to do some work over that long Easter weekend in preparation for speaking on the Bill.

I found this Bill very difficult to digest and if you do not digest, you cannot absorb. This is not within my area of competence, so I was left very much in the air in going through the original document, which was in this nice printed form. [*Holds up document*] I found it rather difficult to find out where the interface was between what this Bill provided for in terms of maintenance and promotion of anti-competitive pricing, et cetera, and consumer protection, which I believe may be the bailiwick of the hon. Minister of Legal Affairs. The interface is very doubtful as far as I am concerned and I speak more as a little consumer.

My fellow Senator, Dana Seetahal S.C. spoke about what they will be saying along the Priority Bus Route. For the benefit of the hon. Minister, the Member of Parliament for Diego Martin Central, he may want to know what the small consumers are saying along the new Diego Martin Highway.

My problems were there from the very beginning. They arose with the clause which deals with all the exceptions. I would not go into detail on clause 3, which gives all the exceptions. The three exceptions I had in mind; the exception which relates to companies which fall within the purview of the Telecommunications Authority Act, 2001. My concern there was how well equipped they are to handle such matters.

I speak now purely as a consumer in relation to one of the companies which fall under their purview, Columbus Communications Trinidad Limited. I have a record of a little incident on April 18, the morning I was preparing to come to debate this Bill. I had cause to speak to Columbus Communications Trinidad Limited, which was previously Rainbow, went to Transcable, went to Cable Company of Trinidad and Tobago (CCTT), now discovered by Columbus.

I had two causes to speak to them about their billing and I spent half an hour waiting. from 9.30 a.m. to 9.45 a.m., I was getting a busy tone, then I waited another five minutes on hold. That is my patience—half an hour in order to communicate with a communications company. That is unacceptable. I would like to say here that we the consumers are disadvantaged because Columbus Communications Trinidad Limited has made unilateral changes to the conditions of service—

Sen. Anmolsingh-Mahabir: That is right. Contempt!

Madam President: I am not hearing.

Sen. B. Ali: I am sorry, Madam President.

Madam President: I am hearing a lot of talk.

Sen. B. Ali: Columbus Communications Trinidad Limited has made unilateral changes to the conditions of service and to me that is totally unacceptable. [*Desk thumping*] They have introduced a late payment and you suddenly see it on the bill. I had one day's late payment and they gave me a bill of \$5.04 or whatever. I asked and they said I had to pay it, so I paid it. I paid it because that is what they said. You only read about that at the back of the bill.

They say also that they send their invoices out on the first of the month and if you do not get it by the tenth, you should call them. I was not going to call anybody to wait for half an hour. More than that, they say even if you do not get your invoice, you must

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pay your bill. Further, they say you can pay your bill at TTPost, but you must have the current invoice. If I do not have my invoice, it means I must go to their payment centre at Richmond Street or Westmall. No way! But if I am late by one day, they are willing to charge me. That is all quite unacceptable.

The billing and invoicing continues to be poor and their reason is that they are changing from a manual system to an electronic one. That is not my problem. After settling my bill, I got another late payment. They said they could reverse it. I said that I had already paid the bill, but I did not pay the late charge. They said they would reverse it. That is the answer to the whole question.

There is a loss of service. You lose service, but there is no credit for it. One day there was an 18-hour loss of service. Maybe it was a *force majeure*, I do not know, but that was a situation because if you call them they say if you live in this area, that area, that area, we are working on the problem. [*Interruption*] That is right. Do not call us back.

Everybody here would be aware of the whole period when you would be looking at the television and suddenly the picture froze on you and there was no audio. Then when the audio came back, suddenly everything started again. It is only after a number of complaints that they eventually put out something saying: "Please go to Channel 2 to see what is happening—to get updated." I went to Channel 2, but you could hardly read it because you were getting all the snow there also.

I am speaking purely as a consumer. In fact, on April 18, when I called them and I spoke to the CSR, I said: Do not be surprised if the name of Columbus Communications Trinidad Limited is called in Parliament because I am going to Parliament to discuss a Fair Trading Bill. That is a monopoly.

Sen. Dr. Gopeesingh mentioned how they have changed the terms to the extent that they suddenly tell you that you are only entitled to two decoders because they are in the process of upgrading. This upgrading will take four to five years. They assure us that in four to five years we are going to have fine digital service. What the cost is going to be, I do not know.

I would like to ask the Minister or whoever is responsible: Is that subclause looking at this in any way? Everyone here must be dissatisfied. I get a lot of people who are saying that they are dissatisfied and it is not acceptable. That is one question I had on that exception number 3(g).

On the banks and non-financial institutions, I agree with Sen. Dana Seetahal, S.C. and with Sen. Dr. Gopeesingh that you just cannot come here and say that that is under the Financial Institutions Act and the amendments are coming. What happens in the meanwhile? The 3(h) here refers to the Securities and Exchange Commission (SEC) and those companies that come under the SEC. There are many insurance companies that do not come under the SEC per se. If they are not listed on the stock exchange and the banks that are now in the insurance business they come under the Inspector of Financial Institutions and the lady there is doing an excellent job, I know. We have had her at our Public Accounts Committee and we are very satisfied with what she is doing. I would like to get more information on that. Are they also exempted from the Financial Institutions Act?

As regards public utilities, it is very unclear how the Regulated Industries Commission (RIC) would perform because two public utilities primarily, T&TEC and WASA, come under the RIC. And that subsection that Sen. Dr. Gopeesingh read, I still do not understand what it says. They say that the Act applies to public utilities within the meaning of the RIC Act save that the responsibility for enforcement shall be that of this Bill when it becomes an Act. I do not understand it. If that is drafting, I do not know. I am not a drafter, but that is really beyond me.

I would like, if possible, for the Minister in the Consumer Affairs Division to say how the small consumer is protected from the monopolistic type of situations. That refers to everybody, even the banks. You cannot do banking on a long weekend because the Association of Bankers publishes an announcement that they are all going to be closed for the period. If you have any banking transaction to be done in that period, you are in trouble unless you go to Piarco. It is the same with the insurance companies. ATTIC puts out the same thing on these very long weekends like Christmas time. If your insurance becomes due at that time, you have no recourse at all. If it is December 31, then you really have trouble. They are all closed. We should be in a situation of competition where a bank can open when it wants, just like in the mall where they open at hours that are different from the rest of the banks. This is what we have been looking at—service from the big institutions like the banks and the insurance companies. I would like to see how the Act will perform in those situations.

Sen. Dr. Gopeesingh made a very interesting point about monopolist companies that may be within the energy sector and it straightaway dawned on me that perhaps bpTT is a monopoly in Trinidad and Tobago. The facts are that bpTT produces 1.9 billion cubic feet a day of natural gas, out of a total of 4 billion cubic feet a day. That is over 40 per cent. Are they abusing power?

Hon. Valley: I do not know.

Sen. B. Ali: Well, that is for you to find out, but I will relate to you a little story. Since December, 2005 those who follow the energy sector will know that there was a problem of deliverability of natural gas to Train 4 because of some pipeline considerations. By March, it was all supposed to be fixed so that Train 4 could have gone up to its 800 million cubic feet per day of gas intake. But during the whole of last month, there was a problem in Point Lisas—and it has been publicized—that companies were being called to cut down on their intake of gas—these are ammonia and methanol companies—or stop some of their plants because of an upstream problem in terms of transportation of the gas to the plants. But when the communications manager of Atlantic LNG was called, she said: We do not have a problem. So there is no pro-rationing then when it comes to LNG. There you have bpTT, the monopolistic supplier of gas to the four trains and a major shareholder in the liquefaction facility. I think it is important that we look at these things and their relationship with others.

When he speaks of Repsol who took over; Repsol is a big shareholder of bpTT and when Sen. Dr. Gopeesingh speaks of Repsol taking over the TSP, those are things to be looked at. I asked a question about TSP and what was going to happen to the 100 million cubic feet a day of gas that National Gas Company produced, because by taking gas that would normally be flared, they use it and that was the cheapest 100 million cubic feet of gas that you could get. Up to today, nobody has chosen to answer that question posed by me. The hon. Minister told me that he likes the Motion that I have filed as a private motion. I expect to get answers like that when that happens.

Madam President, those are my few comments. As I said, I do not understand this Bill. I tried to get what I could from the contributions of the other parties, but I certainly would prefer a much clearer explanation of what this is all about, in the context of business in Trinidad and Tobago.

The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill): Madam President, through you, on the TSP story, the fact is that a couple of years ago the contractual obligation that BP had expired, so there is no contractual obligation again on the sale of the TSP for that \$100 million. However, I am not dealing with that.

5.30 p.m.

Madam President, a lot has been said about the Bill. One of the issues I want to deal with quickly is the question of banks and financial institutions. On the Order Paper for debate, at the earliest possible time, is a Bill to amend the Financial Institutions Act. What that Act is intended to do really is to deal with

similar issues in organizations that fall under the jurisdiction of the regulatory body called the Central Bank, specifically to deal with two things. One is the question of mergers and acquisitions where, in the view of the regulatory authority, the concentration of power is not going to be in the interest of the national economy and, therefore, in the public interest. That is a piece of legislation that we have laid in this honourable Senate and we would be dealing with that shortly. It will deal with all the institutions that are currently under the jurisdiction of the Central Bank which would include banks, non-banks, insurance companies and a host of other institutions for which the Central Bank now has some kind of responsibility.

It is also going to deal with the issue of acquisitions and disclosure of information. One of the issues we have is that as we get into the regional institutions, our Central Bank cannot access from our companies here, holding company information, although it can happen. We are dealing with that in the context of the amendment to the Financial Institutions Act. This is why there is a reference in this particular Bill to the question of it not being handled.

I want to make two quick points on the energy companies. We need to understand that the energy sector is an extremely complex sector which, in some instances, we do not understand because what is emerging in the sector, the technology and the business of the sector is extremely complex and there are few people, like Sen. Ali, who understand it and who can talk on it. What we know of the energy sector is that any company that comes into this country and that has to do anything, is governed by the petroleum legislation and there are contractual obligations in terms of what you can and cannot do. The State extracts revenue through the taxation legislation. In a real sense, the question that has been asked and continues to be asked is: are we getting the best deal? I do not know if we are getting it, what I do know is we are utilizing the best expertise that we have, internationally, to try to understand where that line is drawn between value, growth and taxation. I think we have done it right at this point in time.

Independence cuts both ways. There seems to be a fear by some commentators about control and the fact that, I have heard it in a lot of instances, the Parliament is supposed to control. I have a different view. Let me share it. Once you create the proper environment and the rules and you have accountability, there is a process by which the accountability takes place, it seems to me that you should get out of the way and get people to get on with the job.

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One of the things we have to be careful of is that—we keep making the point all the time—in a small country like this one, in a situation where some of the skills that we have and the industries that we have cannot keep those skills, where we are at a particular stage of our development where we have global competitiveness and Trinidadians who are extremely talented all over the world, the question of what becomes available to us in doing all of these things becomes an issue. Therefore, in the way in which we perform and set up some of these institutions, we have to take account of the fact that there are other institutions that are doing some of the things.

For example, we talk about the question of the Central Bank and the banks, that is why it is not in this Bill. We talk about the question of the Telecommunications Authority, which is a regulatory body, but what this legislation is seeking to do, quite frankly, is to deal with instances where there is evidence, a belief and information to suggest that the practices that are going on basically have no basis on the basis of cost and additional things. In a sense, that is the role that the RIC performs now. That is how the RIC was set up.

Therefore, the concerns that you are expressing in many instances about how this thing will work—if we want to know how it is going to get any chance of working at all, we need to look at how the RIC has worked. The RIC has worked in such a way where it views consumers' needs, it takes from the agencies their submissions, it goes through a process and it comes up with a particular solution and we all live by that. In a sense, this kind of institution that we are setting up is intended to do the same thing. Yes, there are going to be instances where we would have people issues. All we have to do, is to try to ensure that the individuals that we have inside there doing the job for us are those that we agree on because there is no such thing as independence in this place.

One of the problems that we face, I see it with state enterprises in some instances is this, if you are going to hold me accountable for something then we cannot put your man in place because in many instances the reason that I am here and you are somewhere else is because we have different philosophies and it is my philosophy, at this point in time, that will move us forward because it is the one that has been selected. It might be yours tomorrow. Therefore, in those circumstances, as you move forward—[*Interruption*] Sure, nobody is saying no to input. I think the point we are making is that you cannot. We have to be careful with the accountability. You cannot hold—You have to understand what you are asking about is accountability. In some instances, if you bring it here, what you have done is that you have released me from an accountability and then the

system is going to fall down. You have to hold somebody accountable and you have to give them the tools that are required, in order to ensure that they can make those choices. That is all. [*Interruption*]

The Constitution, as we see it today, is what we are working with and many of the comments that are being made do not recognize the fact that some of the things that we have put in place were intended to carry us somewhere. Unfortunately, the framers or those who put some of the things in place did not do it properly or completely. What we now have, in some instances, the Attorney General will tell you, is some legislation on the one hand, but we do not have the other pieces on the other hand. We have issues where there should be legislation to deal with secrecy and national security issues. There is no legislation for that. [*Crosstalk*] The argument suggests that you believe that you would never be in government. You are not saying that to me. I have to assume that one day you will be here and somebody else would be there. If that is going to be the case, then when we are arguing these issues, we should not argue as though you would always be there. You should argue it in terms of when you have to deliver; you would have the best chance of doing it. One of the problems that we face sometimes is that you take a position where you believe that you would be there all the time and you would argue against that. When you come here you realize that we have not progressed Trinidad and Tobago at all. To me, that is not where we have to go. If you know that you have to be there then all you have to do is to support what we are going to do, so that when you get here you would get it better.

The economy is growing at the rate of 6 per cent per annum. In 2001, the GDP was \$50 billion. In 2007/2008 it is projected to be \$110 billion. The fact of the matter is— [*Interruption*] It is the correct GDP, based on gas. That is the IMF Formula so it is not new. The fact that you did not do it and showed bad results is not a function of mine. With this kind of growth that is taking place, we see it all over the place, there has to be some order otherwise there will be chaos. What this legislation and others seek to do is to put in place some process by which we could arrive at some choices that we have to make, where we believe that it may affect us to the detriment of everybody. It is very easy now, based on what is happening with the configuration of the global economy, for a few people to control significant parts of the economy and, therefore, render your economy at risk to a few players. What this legislation is intended to do, at this time, is to give you an opportunity to say to individuals who are so minded: “Hold on, you just cannot come in and do it like that. Here are some things that you must do.” You must convince us that this is required, not in the interest of growing your company, or in keeping with globalization competitive activity, but that this is really something that needs to happen, so that you, as a sector, could grow.

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Remember what we are saying. We are not saying that if you have four or five business we would get you involved. What we are basically saying is that if there is a situation where you and your colleague get together, sit and decide that notwithstanding the economic cost is 10, you are going to do it at 25 and the way you will do that, as we have seen, is by putting a mechanism together that takes away from the population a benefit, then we want to intervene and say: “No, no, you cannot do it. We have to do it this way.” That is what it is intended to do.

If we agree to the principle, then really the issue is how we strengthen what we have or how we deal with concerns that you have, within the context of the legislation. To me, that is really easy to do. We sit and talk about it and then we get consensus.

I thought I would make those few comments on this particular Bill because I thought it was important that we talk about the—*[Interruption]*

Sen. Dr. Gopeesingh: Just a matter of clarification. I noted that you skirted the question of the multinational energy industries and you brought in the whole question that there is a taxation mechanism—whether you agree with it or not—but you have not addressed the issue. For a matter of clarification, would those multinational energy companies be incorporated in this piece of legislation?

Sen. The Hon. C. Enill: There is no exemption for them, so the answer is yes. How you implement it is a different issue, but the legislation as it is currently before us does not contemplate leaving them out. It only deals with telecommunications, because there is the Telecommunications Authority and we feel it is inside there, and then the question of the Central Bank, banks and non-financial institutions.

Madam President, thank you.

Sen. Sadiq Baksh: Madam President, I join the debate on the Fair Trading Bill, at a time when all my colleagues and Senators who spoke before me, clearly understand that it was considered a piece of progressive legislation for over two decades. During that period we had a world situation in which protectionism and structural adjustments were part of the industrial scenario. We are here today and even in 1997, this was considered an important piece of legislation for the protection of organizations within the region. The Fair Trading Bill was envisaged and must be envisaged in the current scenario, where there is a competition policy within the region that is in harmony with what we are doing here today. We are

placing this Bill in the context of the harmonization of a competitive policy within the region. If that is so, then this piece of legislation could well be considered a progressive piece of legislation. If, on the other hand, the policies within the different states of the region differ, then it will be an unworkable solution.

Hon. Valley: This is model Caricom legislation. It is taken from Chapter Eight of the Revised Treaty of Chaguaramas, which deals with competition policy and consumer protection. There are two.

Sen. Mark: Have they tried it out?

Hon. Valley: If they have not, they have to revise their existing legislation.

Sen. S. Baksh: It is within that context—recognizing that it is a Caricom effort to ensure the growth of industries within the region—that my colleagues on this side said, yes we will support the Bill. We want to ensure that we bring suggestions to ensure that this Bill would be workable in the interest of what we expect to derive from it, that is fair trade within the region.

If we look at fair trade within the region today, in many other states, they believe that Trinidad and Tobago has an unfair advantage generally, because of our trainable workforce and our immense infrastructure, industrial and otherwise; because of the financial sector and the state of the financial sector. Therefore, it is imperative that we put in place, safeguards that would give comfort to other states because we want to promote continued exceptional trade between Trinidad and Tobago and the other states, because in trading blocs all over the world, it is becoming more and more important that as we trade with each other, it becomes fairer and fairer. If our partners in other states do not have the economic ability to trade with us, then we would be in a disadvantageous position. Therefore, we are on the same wavelength basically, not necessarily to fight each other but to ensure that we get the best possible solution so as to promote fair trade in a harmonized environment so as to promote development and growth within the region. It is only growth within the region that would really create new wealth in the region.

I am a regionalist and the members on this side recognize the importance of regional integration, regional development and fair trading practices within the region. It is imperative that we look at the legislation to ensure what we believe is the best piece of legislation to promote what we expect to get out of it and to ensure that we put in place the mechanisms that would give confidence to local investors that we are not unduly introducing another layer of bureaucracy in what must be considered as free trade.

As a businessman and somebody who has participated in business for an extended period, both in the public and private sector, it is important that the entrepreneurs in our environment feel satisfied that the legislators are looking to ensure that they free the way, so that they would be able to create new wealth for themselves and the country.

As we look in this new environment, when we are satisfied that we have given confidence to the business people that the legislators have put in place something where the bureaucracy will not stymie them, but encourage them to do more, those amongst us who did not think about mergers, acquisition, corporations and looking with joint ventures might now feel to do so. You may see a counterpart in Guyana manufacturing plastics or some other commodity, whether it is in lumber or natural resources, but when you reach to Guyana to be a part of a joint venture, then you realize that the harmonization is not in place and you have an unfair advantage on the other side. Therefore, I am not saying that would happen but it is our responsibility to ensure that we do everything that is possible to harmonize it.

I know that the Minister of Trade and Industry cannot sit here and tell us that in Guyana, they will do everything because they also have a Parliament and there will be changes, but we have a model and to work within that model is an important aspect.

We need to look and learn from what took place in the First World. We are aspiring, by 2020 or the shortest possible time to achieve developed country status. We are on record as saying that we support Trinidad and Tobago becoming a developed country by 2020 or before, but we want to ensure that we put in place mechanisms now to ensure that we do reach 2020 alive, safe, better educated and with better health care. That is an important aspect of it.

In terms of this Fair Trading Bill, we must take into consideration the United States experience in terms of mergers and acquisitions; some legal, some illegal, some with insider trading and some with outsider trading. We need to be careful that we do not allow ourselves to fall into the trap of Europe, where they ensure that subsidies in less developed countries are nullified, but by indirect methods, they provide subsidies in terms of other mechanisms, including marketing grants and other aspects and then have an unfair trading advantage. Therefore, my own suggestion is that, as we go into the committee stage, we look at aspects within this Bill to make sure that our counterparts—because we normally lead the way in

Caricom, we are sometimes the first to pass the legislation, to show our efficiency and concern and that we are the leaders within the region. I am not against that. We are the leaders in the region and we have the responsibility and authority to ensure that we put in place the mechanisms to lead the way effectively.

My suggestion is that we all look at this piece of legislation to ensure that it will not hinder the progress and prosperity of local entrepreneurs and investors, to ensure that when we go into the over \$50 million bracket, we encourage local entrepreneurs to join with others to reach that stage and to pay special attention to the oil sector, so that we would not find ourselves like we did with Trinmar, where the infrastructure was so much destroyed that it became an environmental issue. After we purchase it for a certain price, the cost of remedial works could be 10 times that cost without us knowing it. Those are important safeguards that we need to look at, so that as we acquire and we ensure the Fair Trading Bill passes through the Parliament that we observe all the experiences of the past, so that we shall not repeat it.

I thank you very much, Madam President.

Sen. Dr. Eastlyn Mc Kenzie: Thank you very much, Madam President. I did not intend to contribute because I really thought that the Bill was way above my understanding and this area is really not my area of strength. When I heard Sen. Mark, Sen. Seetahal and Sen. Dr. Gopeesingh, I said I can put my two pennies worth into it. I have looked at a few things that may sound very “laymanish” but I, nevertheless, want to make my contribution.

It is a pity that the hon. Minister, in his introduction of the Bill, did not specifically tell us that there were model Caricom things that others were adhering to. That was not explicit to us. I think your colleagues in the Senate have to tell you when you come to this House you have to be really, really detailed. I could tell you this, through you, Madam President, when the Bill comes here and it is passed, you take it, when you go down there it will be good because we scrutinize it very carefully.

At the tea break, I asked the hon. Minister and gave him my fear and misunderstanding that I thought, before we actually started the debate, that the Bill was more or less between Caricom States and that it did not have anything to do with our internal operations as a country; something that Sen. Sadiq Baksh has now cleared up for me even more. Having that clear in my mind, now I can say what I have to say.

Just over the weekend the Consumer Affairs Division had a pullout in the newspapers. This pullout was a comparative pricing of certain items of goods in the supermarket, with different supermarkets in Trinidad and Tobago. I looked at it and read through some of the articles. I read the retail prices, et cetera; some in the north, some in south and some in Tobago. I said: “How unfair this could be if you take it at face value.” I will tell you why I said so. This was because the prices in the big chain supermarkets, I am talking about Tobago—Take the chain supermarket such as Penny Savers where there are three large branches in Scarborough, Carnbee and Canaan/Bon Accord in the entire tourist area; the southwestern part of Tobago. They would go to a wholesaler to purchase goods such as milk. They would purchase 1,000 cases of milk. The more you buy, your retail price is less.

Take any little village shop in Lambeau, Parlatuvier, Castara or Charlotteville, probably their turnover of goods is so small that it stays on their shelves for a longer time. They would buy 20 cases, they might buy five cases and it would take them as long to sell or just as short to sell as the supermarket that buys 1000 cases but they are selling it at a cheaper price because they bought 1,000 cases at a reduced wholesale price and they have bought two cases. Therefore, the price that they are going to put on a retail item—they might sell their carton of milk for \$8.00 and Penny Savers might sell it for \$7.20 and you give the consumer, who is free to travel around, the idea, which could be a false idea—because if I leave my home in Lambeau to go down to Canaan and burn more than \$5 gasoline to save \$0.20 on a carton—because nobody is educating the consumer that the candle could cost more than the funeral.

Madam President, sometimes you could really stifle the village entrepreneur who wants to supply that item and do service to their community and send everybody rushing down to own big supermarket. I look at the big chains, big amounts and low prices compared to the small shop with their place in the village.

When you go in the village to a small shop, you are not anonymous. When you go to the supermarket—[*Sen. Dr. Mc Kenzie makes the sound of a cash register*—]—out you go, they do not even know your face. In the little shop, when you go there they would say: “Hi Mr. Gopeesingh, how are you doing today?” If it is the first time that his wife sent him to the supermarket and he does not know what to purchase, they would say: “No, no, that is not what your wife does buy, is dat brand she does buy, carry it back.” You are not anonymous. There is a culture of the small person in a community and environment encouraging entrepreneurship that your fair trading story could make things go wrong.

The next thing is, you go to the supermarket in the village because the last time you went there, the thing cost \$8.00. You went with your pure, naked \$8.00 but when you reach there it cost \$8.50. Do you know what the shopkeeper says: "All right, I will give you and when you come back the next time you would give me the \$0.50." Could you go to Hi Lo and do that? These are some of the things where we destroy the culture of a people and how we interact with one another, because of big business.

I remember items being scarce long ago. The shopkeeper knows every customer and they would hide the three pounds or four pounds of sugar and two pounds of rice. You could never go to the shopkeeper and not leave with something to feed your children. You can ask Sen. The Hon. Gift, he knows that. You can ask Sen. Titus and Sen. The Hon. Rennie Dumas, they know what I am talking about.

Another thing I want to talk about—[*Interruption*]

Hon. Valley: Only Tobago people know that?

Sen. Dr. E. Mc Kenzie: Yes, yes, yes!

Sen. Dana Seetahal, S.C. talked about the banks and I want to bring up something which I spoke about already and want to talk about it again. I am talking about those agents of the National Lotteries Control Board who have to pay the banks to deposit the NLCB's money. If you pay on a Monday, which is the day you should pay, you pay less than if the Monday is a holiday and you have to pay on a Tuesday, because the bank is closed on the Monday. You want to tell me that is not unfair? You have to stand in line for one hour to pay the money. You are told that you pay it because you get immediate service. I saw that someone fainted in the bank. When you read the profits that the banks make, it is actually absurd and wicked! We need to look at that.

Madam President, I want to warn the Government that at times the Government is the agency of the monopoly. Look at it. I said this in the budget debate and am pleased to say that I saw where Sen. The Hon. Christine Sahadeo took me up on one of the cases I mentioned and I am actually seeing action being taken to rectify that behind the scenes. I want to congratulate her in her absence on this. I am not going to talk more about the ADB and their freeze on loans to Tobagonians for poultry farms because there is a freeze in Trinidad, it obviously goes over to Tobago. How unfair, without looking at the Tobago situation to see that we do not have one single poultry farm on the island on any scale. There are ladies who may have 50 or 100 chickens but Tobago is consuming thousands of chicken per week. There is KFC and everyone else. Thanks to the Minister, she has begun to do that.

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We had the same monopoly with respect to gas stations and I have seen that it was done. I read from the newspapers where the Ministry of Local Government and the THA are actually stopping the monopoly of big business all tendering for the contracts.

I have seen in Tobago with respect to the School Feeding Programme, where one company was doing all the meals for the children in the primary and secondary schools. Thank God, for Mr. London and his team, they have now given little village contracts to youth groups and police clubs where there are kitchens where they can cater for 200 persons and they have split up the thing so that small contractors can survive and encourage entrepreneurship.

How is it that you want to train so many people, as Sen. The Hon. Abdul-Hamid was boasting about last week, about all sorts of courses and when they want to get into five-group organizations to produce and service, they want to have a Fair Trading Bill that will actually demolish and discourage them? [Interruption] No? Yes. Hush, you do not know because you are in the thing. [Laughter]

You start to tell them about tendering and when the people tender, you look at who bid the lowest. Who could bid the lowest? It is the person who can buy the materials at the cheapest price. That is what I was talking about. That is why Sen. The Hon. Rennie Dumas understands. That is why there are small contractors in the Ministry of Local Government. The person who could fix a road or a drain would get a contract within his/her means where so many people would then be employed. Open your mouth in the Cabinet when you go there and when they are ready to defeat, you stand tall because you are big.

Madam President, I want to go to two other things in the Bill. I go to page 18, which is one of the things I talked about, the equivalent transactions. You would say that it is not equal if one buys 100 and some buy 20.

Forget that one and let us go to page 26. I agree with Sen. Wade Mark. How could you have a quorum of two people? Have you ever heard that? Except you are going to say "excluding the Chairman". I am suggesting that you say "consisting two members excluding the Chairman". In other words it is really three: the chairman and two other members. You cannot have a quorum of two people out of five. Put the chairman and two members.

Sen. Enill: The first clause says a minimum of three or maximum of five.

Sen. Dr. E. Mc Kenzie: I am talking about the quorum.

Sen. Enill: Once it is three, then the quorum is two. Look at clause 1.

Sen. Dr. E. Mc Kenzie: I saw that. I read the whole Bill.

Madam President: Senators, please.

Sen. Dr. E. Mc Kenzie: Madam President, at the top of page 26, clause 26(4), I feel that the quorum should be three people; however you want to explain it, so it is. I understand when I say three I mean three. That is the quorum. I am not saying what the commission shall consist of. I know the commission is not less than so much and not more than five. It could be four, five or three; it must not be less than three for the quorum; no two-person quorum.

Clause 28(2) should state that it should be published in the *Gazette* and at least two local newspapers. You could choose which ones you want to put them in. I do not agree with a quorum of two and publishing it in the *Gazette*. You saw that?

I think those were more or less the two points from the Bill that I would like to talk on. Madam President, I hope that my layman input would serve to open the eyes of the Government, especially the Minister, to some of the things that would worry us and hope that they would take these into consideration.

Thank you very much, Madam President.

[*Sen. Brother Khan stands*]

Madam President: Senator, we are following the usual order. It is either someone on this side. If there is nobody else on this side, then it is the Opposition.

Sen. Dr. Jennifer Kernahan: Thank you, Madam President, for allowing me to make a small intervention on the Bill before us, the Fair Trading Bill. As a consumer, I was very anxious to welcome the introduction of a Fair Trading Bill into this Parliament. Many citizens from all walks of life have been anxious for the introduction of a Fair Trading Bill into our legislative agenda. Many people have been speaking about this to me as being especially important and relevant in this era of globalization and a liberalized economy and they felt that it is important to strengthen our legislation to ensure strong consumer support and protection in this liberalized and globalized era.

I was flabbergasted to be confronted with this particular Bill, because going through the Bill at first glance I felt that it did not really speak to the needs, hopes and aspirations of the majority of citizens of this country at this point in time, with respect to their expectations of a Fair Trading Bill.

My colleagues have spoken at length with respect to the issues that they feel are important in this Bill and I want to add some of my own perspectives on this. The essence of globalization is a fact that manufacturers and trade and service providers are

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exposed to the competition of huge multinational conglomerates that themselves are so huge and powerful that there is unfair trading internationally at this point in time. Everybody understands that process. There is no way that small companies in underdeveloped countries can ever hope to compete on a level playing field with huge multinational conglomerates. It is because of that essential fact that ordinary consumers were hoping for the sort of legislation that would not only protect the ordinary consumers and laymen who find themselves in this milieu, but also our manufacturers, producers and service providers who are relatively small, compared to the multinational corporations. Our manufacturers, service providers and traders need protection in this international environment. We do not need to tie their hands and feet and have them, at this point in the game, handicapped in any way, in order to compete against the international environment at this point in time. What is going to happen is that we will have a chain reaction of unemployment, job losses and serious economic implications for ordinary workers and the working population if we have any negative fallout, which it will have, in terms of our ability to compete.

One of my colleagues has indicated that our competitiveness in the international arena has fallen drastically from 32nd to 60th within the last four years. We have fallen in our ability to compete internationally. As a layman and a consumer, I very much fear that this particular piece of legislation is not going to do anything to help us raise our level of international competitiveness.

We have to face the reality. Every day you look at CNN, BBC and the World News. As an ordinary person I do not have any pretensions to being an expert in trade matters but as you look at what is happening in the world, you see every day there are mergers and monopolies emerging out there. There are fewer and fewer companies which own the communications industry in the international arena and which provide telecommunication services in the international arena. There are fewer and fewer persons who make electronics, cellphones and pharmaceuticals. There are fewer and fewer players in the international arena, because in the international arena mergers and conglomerates are formed every single day. This is what we are up against in our small economies. When we talk about a \$50 million enterprise not being allowed to merge in order to make themselves more competitive, these people are competing with \$50 billion enterprises on the international market.

This Bill is anachronistic. It is from an era 10 years ago. We might have started initiation on this but that was 10 years ago and the hard facts of globalization and trade liberalization have overtaken us over the last 10 years. We have now players right here in our marketplace that our manufacturers, traders and service providers have to compete against. They have multi-billion budgets.

The other aspect of this is that any 13-year-old with access to a credit card can get goods and services on the Internet on eBay, Amazon or different websites and can buy anything they want. There are service industries that would get these goods to you in two or three days' time. That is the reality of the globalized and technologically advanced world. In two or three days you can go on eBay and bid where there are various auctions and you can buy an item and from your sky box, where you have a foreign address, they can bring it to your door. You do not have to leave your house to access any goods or services now. Where 10 years ago, our manufacturers and traders needed legislation in case they established monopolistic practices and were providing goods at inflated prices, our consumers have moved way beyond that. We do not have to go to Port of Spain anymore to buy clothes, jewellery or shoes. You do not have to go into any of the malls. You sit at home, take your credit card, go on the Internet and it is delivered to your door. We are not as affected. Consumers here are not affected by those practices because it is a liberalized, globalized world. That is the reality.

When the Government ties the hands and make these mergers more difficult and has to prove that it is not being done to restrict and stifle the market, those issues are not relevant as they were 10 years ago. Therefore, we are doing two things, we are not benefiting the consumer who is not constrained by these market forces anymore. These market forces have long been freed up and liberalized and they can get their goods and services. You can go worldwide and get the best prices for whatever you want to buy. You do not have to depend on anybody bringing any goods and services here anymore. You can shop around on the Internet and get the prices that you want. You are not necessarily benefiting the consumer anymore because the consumer has gone way beyond that and you are making these businesses, traders and service providers even more uncompetitive in the face of tremendous competition and the hardships that they face trying to compete against these huge monopolies.

People who were looking at a Fair Trading Bill were looking at more relevant issues to be faced at this point in time. The relevant issues are how do you strengthen and protect the consumer who has this wide range of choices now, who are up against the most experienced monopolies and who are up against the canny traders with their high pressured sales pitch and their very sophisticated sales techniques. This is what the consumer—who might not have the resources, especially where there is e-commerce and who might not have the strength and backing of legislation in terms of all the issues that are going to arise when people

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trade in goods and services—is up against now. This is what we thought would be coming to Parliament at this point in time in this new globalized era, where the consumer would be educated, strengthened and supported by legislation as to how they should operate in this new environment. This is what we thought would be coming to Parliament and this is what we had hoped for, instead of this anachronism that has come before us.

Strange, I would have thought that the Government would be au courant with these issues. I have a document entitled *Consumer Protection in the Information Age*. It is a Green Paper by the Ministry of Legal Affairs, Consumer Affairs Division, dated April, 2005. They have recognized all these issues. I would have thought that if this Government was serious, the legislation that would have come before Parliament would have been based on the studies and new issues that have been recognized in this document.

The first paragraph in this document, under Consumer Protection Gaps states:

“The marketplace has changed rapidly in the last 20 years, leaving gaps in the protection afforded today by consumer laws. These gaps, coupled with other domestic, regional and international factors, serve to highlight the need for immediate reforms in the framework of consumer laws in this country.”

Hon. Valley: This is not consumer law.

Sen. Dr. J. Kernahan: It has to do with consumer law because this has to do with fair trading.

Sen. Dr. Gopeesingh: It is detrimental to the consumer. Consumer laws have to underpin fair trading. You cannot talk about fair trading unless you talk about consumer laws.

PROCEDURAL MOTION

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Madam President, I beg to move that the Senate continues to sit until the conclusion of the debate on the Bill before the Senate.

Question put and agreed to.

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Sen. Dr. J. Kernahan: Thank you very much. I do not understand why this Government is refusing to recognize the connection between fair trading, consumer protection, consumer laws and the legislation that would speak to strengthen and empower consumers in this era of globalization and liberalization.

It is a direct connection. It is not anything that is even indirect. All the issues were discussed in this Green Paper and I am surprised that this Fair Trading Bill that was brought before our Parliament today has nothing to do with all the consumer protection issues that were raised and recognized as important in this era.

People are going on the Internet and trading with huge service companies which are based right here in Trinidad and Tobago and there are no laws that have been updated recently to protect consumers, in terms of service providers, which is a different ball game. There are no updated laws that are able to ensure that service providers engage in fair trade. These are some of the issues that this Government will do well to recognize and rectify because it has to do with the quality of life; the well-being, socially and economically, of the people of this country. Maybe this Bill is badly named. This Fair Trading Bill has nothing to do with the rights of consumers and the need for consumers to be protected and supported in this era that we find ourselves in. Maybe they needed to name this Bill something else because this is not a Fair Trading Bill. This has nothing to do with the hopes and aspirations of the people of Trinidad and Tobago for fair trading.

It is amazing that this Government would do all the studies and have all the recommendations in place and at the last moment there is this misstep and disconnect between what is actually necessary and what is being done.

When we look at this Bill before us and we look at some of the clauses in this Bill, they always seem to miss the point. I do not know why they keep missing the point, in terms of what is really necessary at any particular point in time. What we needed 10 years ago was not established or delivered. The Government has come 10 years late in a totally new environment and expect us to say that it is doing a good job and it is not like that at all.

Clause 5 of this Bill deals with the establishment of the Fair Trading Commission and establishment, powers and functions of the commission. We have serious problems with this particular commission. In the first place, there are huge multinational conglomerates operating in Trinidad and Tobago and the Government is saying that this commission would be able to investigate these companies and initiate investigations into fair trading practices of these multinational corporations. The Minister in the Ministry of Finance, a moment ago, said that the Bill says so but whether or not we will be able to do it is a different story. Therefore, they are fooling us. This is absolutely of no consequence or importance.

If the Government is saying that it will not be able to implement this with respect to the large conglomerates and the large multinational corporations, then what is the Government doing? They are the big players in the field now. They are the ones who are providing all the services and the goods and if we cannot investigate them and we would not be able to deal with their issues of fair trading, it is a waste of time. You would not be able to investigate them, so you concentrate all your forces in penalizing, analyzing and initiating investigations of the smaller players who are unable to compete. The Commission will be empowered to:

- “(c) investigate on its own initiative or at the request of any person adversely affected and take such action as it considers necessary with respect to the abuse of a monopoly power by any enterprise;”

This is only going to affect the small local players who are fighting for survival and the survival of their employees and the dependents of the employees in this country. This is not going to affect the big players in the field. The Minister has actually admitted that.

Clause 49 states:

- “(1) The Community Competition Commission shall have the power to undertake such investigations as may be necessary in Trinidad and Tobago.
- (2) ...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.
50. 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 the Rules made by the Supreme Court under the Supreme Court of Judicature Act...”

This is a travesty of justice, because what we are saying is that this particular commission has powers to investigate and then go on to adjudicate on the same issues. We are talking about small players; we are not talking about the big players. What is going to happen here is that you are penalizing small industries, traders and service providers and the big players will go free because you cannot touch them. Why are we penalizing the small ones? They provide our employment.

The Government is touching people who provide the employment, sustenance and everyday living for the people who are employed in this country. What this Government has been doing is that, due to its policies many people are not going into service industries. They are not attracted to the trade industry and manufacturing because of the opportunity cost. It is easier to go into CEPEP, URP or get a ghost gang. On the one hand, these industries are not attracting the best, in terms of labour. The labour is going elsewhere. It is being financed by the Government to go elsewhere in unproductive work. We already have a problem with productivity. When you have a productive enterprise that is employing people and raising the social and cultural levels in the country, the Government wants to stymie, inhibit, investigate and adjudicate them. What are we doing? Why are we heading in this direction? The policy behind this Bill is that we are trying to lock the stable door after the horse is bolted. We are in the era of globalization and liberalization. We have long gone past the whole thing about looking at mergers and penalizing monopolies. That is so passé, according to the young people. It is very passé and typical. It is par for the course for the PNM. The PNM is always 10 and 15 years behind time. I am not surprised that this is what is happening here.

This Government really does not have any vision for this country. It does not have a clue. It seems to be going around in circles. They have proclaimed globalization and liberalization as the best thing since sliced bread and yet it seems that they do not appreciate the realities of globalization and liberalization. They do not appreciate the realities that our small players are placed at a tremendous disadvantage and that they have to implement legislation now that will boost them and give them some sort of comfort and succour in a situation where they are totally out-manoeuvred by the huge conglomerates.

These huge conglomerates are not stopping at where they are. They are getting richer, more powerful and more aggressive. Very soon, in order to survive, every single industry, service sector and trader in this country would have to append itself—[*Interruption and Crosstalk*] to recognize it or not.

Madam President: Senators!

6.30 p.m.

Sen. Dr. J. Kernahan: Madam President, the reality is that we in these small underdeveloped countries are not going to be able to compete with multi-billion dollar enterprises that are getting stronger, more powerful and more aggressive every single day.

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I believe that this Government does not have a clue; it does not understand which way is up; it is penalizing people they are supposed to be supporting; and it is supporting people that they are supposed to penalize. This is what is happening here. [*Desk thumping*] From my layman's perspective, this is my take on this Bill.

I would like to see the Government do some serious work with respect to consumer rights, consumer protection and legislation that is really going to make a difference in the lives of ordinary people in this country.

I thank you. [*Desk thumping*] [*Interruption*]

Madam President: The Senator is on his feet. May I have some silence, please?

Sen. Brother Noble Khan: Madam President, thank you. This time of the evening seems to be whipping up a little, and it might not be so bad because it would keep some of us awake.

Madam President, what is before us is a very fundamental piece of legislation because it gives us an insight into the economy and the path that it is pursuing. The governance or the direction from which the economy is being taken seems to be part of the globalization process, and what we are attempting to do is to refine some parts of our economy, the method of process, governance and control. It makes use of a very important word "fair". I would like to ask the question: fair for whom? The law seems to explain that, but because of where we are our concept of fair would be wider and it should be brought to bear in this area.

My first impression is that the path to which we are being led could be metaphorized as a leaf being drifted down a turbulent stream. If this is how the economy is being managed, there appears to be hopelessness for the future. This is very evident in what is before us.

All legislation should have a feedback and it should reach the majority of people. The legislation would enhance their being part of a society to which they belong. The model seems to be a sort of a capitalist model; a model that is faceless—lacking a human face—a model without a soul; a model that does not take care of the most, and where the vitality of the society is in need of mobilization and formulation for systems and patterns through our legislation would lead us to one that demonstrates an element of conscience. That could definitely be transferred toward the wider prospect of the nation. I do not think that this piece of legislation enhances that.

Madam President, it follows a pattern. There are some economies that have gone that way before and we are following them. Of course, we know the models that they have talked about—First World, Second World dropout and Third World are like that. We seem to be somewhere between developing, but not in the backward part of developing, but a little forward part. One wonders if that is the model we should follow.

In past contributions, particularly with legislation such as this, I always try to make the point that there is need to formulate and create. We are supposed to be a creative people. Creation is not limited to any particular people or nation, but it is part of the human inheritance. As far as I could see, there is need for catching up.

We could talk in terms of looking back in the days when the dood wallah went about—that is a milk seller—and instead of having the measurement, a shortage of it was often given, there was need for these cups to be measured. There was a whole system that went into that, and the verity of 14 ounces not being a pound was questioned. That is what you used to get. There was also the question of 34 inches not being a yard, and that whole mechanism. Today we are bringing commissions to overview, oversight or overrule, but these are parts of the control mechanisms. It does not only rest, in this case, in the area of part of the finance or part of the world or the business part of the world. There are also commissions with respect to the environment, agriculture and so forth. So this forms part of that bulk of legislation that we have which deals particularly in the area of business.

Obviously, one would think in terms of looking at some of these commissions and to see how they operate, and a new commission is being created. Not too long ago—I am a layman and I have one insurance policy which is supposed to mature when I die so that I could be buried—someone whom I credit with having some knowledge of insurance said to me—I do not know if this is so but I know that we do have some knowledgeable persons on the other side—that within the legal framework of the insurance system the investment portfolios have to be limited to some extent to Trinidad and Tobago.

If, to my simple mind, these insurance companies continue to grow and expand, it means to say that little by little or more by more these companies would have a bigger share into the ownership of Trinidad and Tobago. Ultimately, I do not know how far we are from being totally controlled. I have been hearing expressions of 40 per cent to be applied in respect of the law that is before us. What are the mechanisms that are in

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place to control this area? In matters such as this they are able to shift their tongues, or on the local scene it is said that some people talk with forked tongues. This I do not know. It seems to me that an element of fairness is needed in that area on a different commission.

Madam President, the point I want to make here is that we have commissions that would appear not to be meeting certain elements of fairness, and we are creating more commissions. This might be an isolated case. It might be one that is not correct. The person who told me that is supposed to be a very reputable person.

It seems to me, as in so many other parts of this legislation that is being brought before us, there is the question of implementation of how these things would be brought to bear insofar as we seek to build a better nation. I think all of us are committed to that.

I mentioned the question of the capitalist model, and one could think in terms of one of the architects of the modern economic model. From my earlier days, I remember John Maynard Keynes. I do not know if he threw his hands up in despair. After all, Keynes had said we are all going to die, so we could very well take what is before us like that. I do not think that is the idea and we are about that. I cannot leave that out of the matrix. If that is the model we are following, I think one should question how much of it we are pursuing. I know much has been said that to a great extent that it no longer applies and so forth, but we have to remember that these men have laid a foundation there to be fair and just and that is being refined. Again, I am asking the question, for whom, if we do not have a direction and a clear pattern.

I would go back to what was referred to as some of the most deadly sins by a great servant of the past, and a great patron of such men like Dr. Martin Luther King and Nelson Mandela who were students and followed in his path. I am referring to Mahatma Gandhi, one of the architects of modern day India. At the moment, there seems to be some deviation from the economic model that they are following, when one thinks in terms of the grips that Nehru had with the socialist model that he was following, and what is presently taking place in the Indian subcontinent and in the world. Of course, there is need to bring in commissions like what we have here.

Some of the things that he warned about—I would like to put them on the table here. It is not only relevant here, but in other areas. When we think in terms of a society, unless we give direction to that society, we could be in much trouble; not the least of what we are facing. Some of the advice that he proffered and synthesized were expressions like “wealth without work.” This is a very important aspect. How far we

would allow that because this would lead to manipulation and the need for instruments such as what we have here—"business without morals;" "pleasure without conscience." I am going back to business without morals. That might be a very pertinent one. We are seeking and entering into new areas; we are on the threshold of scientific discoveries; technology and so forth. He did mention "science without humanity;" "pleasure without conscience;" "education without character;" "politics without principles"—I, myself, was not left out—"worship without sacrifice."

He has synthesized these seven deadly sins. It may well be wise to pay particular attention to them in our own reflective moods. Basically, as spiritual beings, we would have to link—even if we try to override that—those qualities within ourselves and face the conscience within our own selves—the need for bringing this mix which I proffered here—in trying to bring fairness or what is before us as a fair model.

With these points, I would like to think that there would be hope with respect to this piece of legislation. I am sure that a number of persons outside, "fair for whom?"—would benefit.

I have tried to demonstrate with an example some of the instruments that we are putting in place like the inefficiencies that seem to persist in bogging them down. How could we move forward as a society if we do not take those elements and place them within ourselves?

The economy that we follow is still a mono-economy, and that was there since the earliest days of slavery and indentureship. We are a Caribbean people and there are elements with which the Caribbean is involved—the same way as it was then.

We have some gas and we are burning it out. In some areas we are making energy and hoping to build a better Trinidad and Tobago. The question is if that is the way to go. There seems to be a bitter taste in so many mouths. Toward this end, though we are putting these instruments in place, the question of heaping a set of instruments and not being able to carry them out is one thing, but where they are leading us to remains. Still, there is a big question mark. The division, the share is not clear despite 2020 and so forth.

The question seems to be farcical to some extent and, possibly, in the arts we could find a play in that. If it is that the architects of our modern economy have lost their way in some place, I pray to God that they would ultimately find themselves back on a way that we would really see hope and expectation.

Madam President, thank you. [*Desk thumping*]

Sen. Carolyn Seepersad-Bachan: Madam President, thank you for the opportunity to contribute on the Fair Trading Bill, 2006. My contribution would be brief. In the Minister's presentation, he said that there were several changes to the Bill, and it was passed in the Lower House in July 2005. The Minister indicated that there were consultations with the business sector. I would really like to know what were these concerns with respect to this particular Bill and if those concerns were addressed.

In listening and perusing the Bill thus far—I must admit that I left some important notes that I wanted to use in my contribution at home, but I would try to do it from recollection—the Minister said that this legislation really deals with the abuse of monopolies and the elimination of anti-competitive merger agreements. It does not prevent mergers; it does not prevent monopolies; but the intent of this Bill is to ensure that we prevent monopolistic behaviour. In effect, when we say monopolistic behaviour, we are talking about those who abuse because of their position of being in a monopoly. At the end of the day, you want to prevent anti-competitive behaviour.

The Minister mentioned a couple of issues and I would like to start with the Adam Smith Institute. You said a report was done sometime in 1991. Some years ago, I had an opportunity to look at that report. I sat on a committee that was developing telecommunication policy. Although it spoke to the issue of regulation, I recall distinctly, coming to the end of that document—in fact it was a presentation—there was this issue of regulatory bodies. I am raising this issue because when we talk about regulations—this whole issue of fair trading; this whole issue of competitive behaviour and good competitive behaviour would come into play. The purpose of regulation is to ensure that this environment is competitive; a healthy competitive environment.

One of the issues is that we are very much aware of the importance of preventing anti-competitive behaviour, and Trinidad and Tobago was taking this approach to look at regulation in this manner for many industries. This is how the Telecommunications Authority and the Regulated Industries Commission (RIC) which deals with electric utility came about.

To some extent, when I was at the National Petroleum Marketing Company, there was a regulatory body for the Ministry of Energy and Energy Industries. For some time now, there has been this argument as to whether or not this country has the analytical skills to be able to support this kind of effort. More so, we are seeing it today with the Telecommunications Authority. What is taking place today between Digicel and TSTT and the challenge that we are facing is whether or not we have the analytical capacity to regulate, because we are dealing with very experienced persons coming from other parts of the world where they have probably studied how to overturn and circumvent.

In 1999 when this discussion was taking place, I attended a seminar with the National Association of Regulators of Utilities and Industries. That is a US-based association where all the regulators of all the states come together for this two-week seminar in August. They have opened it up for international participants. You learn a lot about how to prevent anti-competitive behaviour; monopolistic behaviour and so forth. It is a very nice two-week programme. Many persons from here have attended and also people from the Caribbean region. We attend on an annual basis.

They started putting on a session for Third World countries—let me withdraw that statement—small countries or small states. Even in the United States of America, they are facing this problem of regulating industries and the telecommunication sector. We heard from other speakers the history that we went through. We started off one day saying that we are unbundling and then the next day we say that we cannot tell them to unbundle. At the end of the day, we have to ensure that consumers would benefit.

As Sen. Wade Mark stated, there are times when there is a natural monopoly because of the economies of scales, especially for small countries like ours. It is important that they are allowed to compete because at the end of the day, it makes them competitive on the global market. There are many other issues. We have seen this trend go back and forth many times. When the thinkers get together in this conference during every August these issues are raised.

Madam President, they started putting on a session for small countries. I remember participating together with Jamaica, Barbados, St. Lucia and all the other countries. One of the issues that came out that year is that when you look at the capacity of your country, does it make sense implementing a Fair Trading Commission? Does it make sense implementing separate bodies like one for telecommunication; one for the electric utility; and one for pipeline? When you look at these issues and you get down to the fundamentals—whether it is a pipeline that you are dealing with or an electric utility distribution system or a telecommunication system—they are all networks; they are all interconnected, and because of that there are fundamentals that if you group persons together with the same skills they would be able to build the cadre of analytical skills required to analyse the industry properly.

Madam President, I am raising this matter because I remember seeing the Telecommunications Authority going out and advertising for skills. I also saw the RIC doing the same thing. In order to make the pronouncements that they have been making, they must be based on substantial analysts reports. Where are these analysts coming from? You do not want to pronounce on anything and then end

up with a lawsuit. I am sure that this very same Fair Trading Commission is going to be faced with this same challenge. Where are they going to get the skills? Do you know what is going to start happening? They are going to start pulling skills from the Telecommunications Authority and the RIC and then somebody else would suffer.

What is going to happen when we start looking at the natural gas industry? That is a distribution system that is becoming very complex. Do we start looking to regulate that industry? Do we need to tell them to unbundle their services like we did with the telecommunication companies?

Madam President, I just want to take a quick look at some of the clauses to show you that the analytical capability must be present. These are just a few examples. First of all, the Minister started off talking about mergers. If you look at clause 13(1) it says:

“Merger means the cessation of two or more enterprises from being distinct whether by purchase or lease of shares or assets, amalgamation, combination, joint venture...”

In that clause, each one of them is very complex. If we are dealing with a joint venture and a hostile takeover, are we taking over assets? If we do not want to buy out the shares—as the Minister in the Ministry of Finance would know—we would approach them and start buying out their assets, and in that way we would start becoming a monopoly, because we would now be controlling individual assets. You could do this through lease arrangements. These are the complexities that would arise.

A very intelligent group in one entity could say let us agree to lease part of our equipment. I do not want to go into the telecommunication sector because we are not debating that here. If, for example, I go and lease some of your trucks, I could eventually become a monopoly just by leasing your assets.

If you want to determine if there is going to be anti-competitive behaviour because of a control—taking the majority of the market share—these are the areas that you would have to look for. You would find that the standard ways that we thought anti-competitive behaviour exhibited may no longer exist. It is not only in joint ventures. Do not look for somebody saying that Sen. Sadiq Baksh and I are going to negotiate and we are going to form a partnership and one joint company. That is not how it is going to be done.

In this global economy, you are even going to find more challenges because you are going to find an external entity merging with an entity here that is a silent partner. When the entity comes in and leases your assets, then you would have a monopoly. These are issues and the type of research that we need to go into when we are dealing with issues like this.

You also talked about what you consider to be a monopoly, and you used the figure of 40 per cent. I still do not understand that. I hope that when you are winding up you would clarify that issue. I am not seeing the difference between the goods and services in Trinidad and Tobago. If I am part of an interconnected network supplying Trinidad and Tobago—I know that we are touching into another piece of legislation—why do we want to prevent anti-competitive behaviour? Why do we want to prevent the monopoly situation? It is not that we want to prevent the monopoly, but we want to prevent a situation where it is possible to end up in a situation where you have the majority market share and, therefore, you could take advantage of that. That is the anti-competitive behaviour.

There are many other ways. Are we going to try predatory pricing? Where does that come into this? Would these regulators or commissioners be looking for clues if there is predatory pricing? You could destroy an entire market through predatory pricing. We could take up control and underpricing until we buy out everybody and undercut everybody, and then we would eventually end up with a majority and we would have to raise all the prices. You would then recover all the profits that you have lost before the market was destroyed. It is not so much that when this happens you could go and charge and penalize. The importance is to try and detect it and prevent it from happening so that you do not destroy that particular market. There are many business persons who could be negatively affected. When they have disappeared out of business they cannot come back in. I wonder if the Fair Trading Commission would be looking into these issues?

Madam President, what determines anti-competitive agreements? What determines anti-competitive behaviour? That has to come from substantial evidence from substantial analysts. Where is that coming from? Again, when they go to the Appeal Court—if you are talking about a big business, especially a foreign business entity—the kind of resources that they would have to go to court to fight the Fair Trading Commission—to stand in your own court—you would have to be very clear in terms of the legislation.

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Madam President, I must admit that I did not go through the entire Bill in detail, but I am not seeing the guidelines anywhere. Where are the regulations to go with this Bill to ensure that the Fair Trading Commission does not become a runaway horse? These days we are hearing a lot about unfair treatment by these various bodies and so forth.

The other issue I would like to raise has to do with interlocking directorships. I always say that it is good to look at this type of legislation and see these clauses and other pieces of legislation globally, but when you are dealing with a small country like Trinidad and Tobago—it is unfortunate—how many persons do you have to serve in the capacity of directors? You are going to see many interlocking directorships. I am not sure what the intent of clause 15 is.

If a director is sitting on two boards, is it because he is sitting on these boards there would be the possibility of a merger? It does not make sense. It is either you are going on the basis of a merger or anti-competitive behaviour. You would have to treat it like that; you would have to develop the capacity to determine and ascertain if there is going to be some sort of merger or joint venture, et cetera, and ascertain if there would be anti-competitive behaviour.

Madam President, you cannot determine that if you have a director sitting on two separate boards doing the same business. The companies may be in competition, but you cannot prevent a person from sitting on two boards where two companies are competitors. If you have that interlocking directorship, it does not say that you must be put under scrutiny because you are going to be underhand. If you suspect underhand anti-competitive behaviour then you would have to determine that. You would have to determine that through the requisite analytical studies, and not because a person sits on one board and then another board with the competing companies.

I am not sure of the intent of clause 15. I feel it is something that the Minister needs to look at and it should be removed. At the end of the day, if we want to deal with anti-competitive behaviour, it must be very objective. The Government must be prepared, through the Fair Trading Commission, to get the required skills to do the job and do not worry about speculation. This falls into the realm of speculation.

The Minister mentioned the threshold value of TT \$50 million—

Sen. Dr. Gopeesingh: He could change that by an Order.

Sen. C. Seepersad-Bachan:—and TT \$50 million is about US \$7 million: Would that not be rather intrusive in the business environment if you are going to start monitoring everybody who has assets of \$50 million? That is minuscule when compared to what is taking place outside there. Are you going to start investigating every company? You are going to be bogged down with everybody. Are you going to clog the system? Someone asked the question—when you said that there would be one month to respond and so forth—about the timing. You would have to scrutinize so many entities that you would not get the job done. One may fall through the crack—that might be the dangerous one that may fall through the crack—and while you are scrutinizing the smaller ones you would have to take a decision on that matter. What would happen now is that you would end up with bureaucracy because you are intruding into the business sector. You are not allowing that free cooperation among business entities.

Madam President, someone made the point earlier on that on one hand we are saying that we want cooperation from the business sector, and then we are telling them that they have to get their acts together and they have to coordinate if they want to compete globally, et cetera.

When I was at NP, I remember Texaco and Shell joining services to offer technical services in the Caribbean. That was really an anti-competitive behaviour. You are telling me here now that they could have done that. They did this across the region. So why can two or three of our companies not come together to offer a service? When one looks at the asset base that we are talking about, that figure is too small. It is minuscule relative to the rest of the asset base of the business sector.

Madam President, the Minister talked about the definition of “market share” in clause 22(3)(b) which says:

“where the market relates to the export of goods of any description from Trinidad and Tobago—

- (i) forty per cent...which are produced in Trinidad and Tobago...
- (ii) forty per cent...of all the goods of that description...produced by a group of interconnected bodies...”

What is an interconnected body? There are so many different types of arrangements for interconnection. What are we talking about? Is it a joint venture arrangement? Is it a partnership? *[Interruption]* Neal & Massy is a group of subsidiaries. Are you talking about joint ventures, partnership arrangements or lease arrangements among entities? I think the legislation is silent and there is need for a

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definition for “interconnected bodies”. The same way that you proceeded to define “market restriction” and “tied selling”—I do not know if that is the reason you went into the middle of the Bill to give us some definitions. I do not know why you did not put these definitions at the beginning of the Bill where they would normally be. I think these definitions would apply across the entire piece of legislation.

Madam President, I am recommending that these definitions go where they would normally be. There is a definition section of the Bill. I think there is need to define “interconnected bodies”. I really do not know what it is; where it spans and what the limits of these interconnected bodies are.

Hon. Valley: At clause 20(b) it is defined.

Sen. C. Seepersad-Bachan: Well, I am going to take your word for it. So the definition is:

“any two bodies corporate are to be treated as interconnected if one of them is a subsidiary of the other, or if both of them are subsidiaries of the same body corporate.”

Is that going to capture what you are trying to get at? I thought that with the interconnected bodies you are saying that if these bodies are coming together in a partnership form and taking up 40 per cent then there is need to scrutinize. That is my point. The point I am trying to get across here is that today business arrangements are not by subsidiaries and holdings, et cetera. There are many joint ventures outside there; there are many partnerships; and there are many agreements through memorandum of understanding and so forth. I am not sure if that is what you were trying to capture. If you were not trying to capture it then, what is the basis for not capturing it? The issue here is to prevent the anti-competitive behaviour.

Madam President, in the last Bill there were many fines, for example, if you were vexed and you walked out of a meeting and so forth. Are those fines still there?

Hon. Valley: Yes.

Sen. C. Seepersad-Bachan: Some of these fines are still there. Madam President, this brings me to two points. When the European Union members were revising their legislation and so forth—especially when companies come together it is important for us because we are going into the CSME—they moved away from this kind of bureaucratic approach to control. What they are looking for now is a rule-based approach. So you put down your rules and either you could conform or you do not conform to the rules, instead of this bureaucratic approach where people go into your company and investigate, research your material and open your books, et cetera.

Madam President: Somebody's cellphone is ringing. Could you take it off?

Sen. C. Seepersad-Bachan: The whole issue of the rule-based approach is something I think the Government needs to look at since we are dealing with regional blocs—whether it is the European Union and so forth. The Government is taken up with control rather than performance. One minute we are trying to tell the business sector to get their act together and become competitive, et cetera, and the business sector is complaining that its cost is going up; the Government is not creating a competitive environment; they are not becoming competitive internationally; they are shrinking more than expanding; they are not expanding their plant and equipment; and they are holding on and just speculating. They are saying that it is because of the uncertainties in the environment and the increasing cost of doing business in Trinidad and Tobago to produce goods and services.

Madam President, when you put this extra burden on them they would have to add it in as a cost. Anybody who is doing business in Trinidad and Tobago is going to add this on as a cost. They are going to look at your legislation and measure the controlling factor and they would say: Okay, this is the amount of control that you have and it is not so free and open and, therefore, I would add a premium for doing business here in Trinidad and Tobago because of this level of control.

The Government probably needs to start looking at drafting its legislation along the lines of performance-base as opposed to a control-base—I want to monitor you; I want to scrutinize your books; I want to summon you; I want to charge you if you get vexed in a meeting; and if a person quarrels inside a room with a commissioner you want to fine that person and send him or her to jail for two years. This cannot be a healthy environment. I think the Minister needs to rethink this. I think the issue with who quarrels with who needs to be taken out of the Bill. If they get up and leave the meeting without the permission of the commissioner they should not be fined for doing that. *[Interruption]* Madam President, the thing about that is that they would feel the consequences down the road in terms of delay.

Sen. Dr. Gopeesingh: Dr. Ken Julien is not coming to the select committee so he should be fined.

Sen. C. Seepersad-Bachan: You should probably fine them for not coming. The point is, at the end of the day, why are these commissioners there? They are not czars. They are there to facilitate and protect these businesses and, therefore,

you must find a way to be able to consult and dialogue. This Government does not seem to be going down the road of dialogue. They seem to be going down the road of controlling all the way down—whether it is with the aluminium smelter plant and so forth. It is just persecution. I think the Government needs to start removing some of those fines from this Bill.

Clause 48(1) talks about the Community Competition Commission:

“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 established under the Treaty.”

My concern is what if our definition of what is deemed to be “anti-competitive”—based on our definition, analysis and determination—is not deemed to be an anti-competitive behaviour by this Community Competition Commission? We are talking about a regional body; we are talking about facilitating the CSME and so forth, so where does COTED fit into this? I would imagine that if this is the case it should go to that body.

When we talk about harmonization; is there harmonization of a competition policy across the region? I understand that you are having discussions on this matter. What I deem to be an anti-competitive agreement, based on my analysis, would this be the same for Jamaica, Barbados and the Caricom Secretariat, et cetera? I look forward to hearing a comment from you on this matter. When you listen to the business sector you are not getting that impression.

When the Minister was piloting the Bill I asked about the concerns of the business sector; if those concerns were addressed and what was the basis for that. Where are you in terms of the competition lower framework, if there is such a thing in this Caribbean region? I look forward to the Minister responding on those issues.

I think I have captured all the issues. We need to hear something about the regulations. At some point in time, I want the Minister to look at the Adam Smith Report and the National Association of Regulators and Utilities and Commissions (NARUC). I know that we brought back a lot of notes from that two-week seminar which takes place every year in August. Let us see where the thinking is. They have developed a lot of models for small countries like Trinidad and Tobago. It was very interesting because they also talked about the issue of regional bodies coming together. They showed you a process for it and how it could be evolved.

Madam President, I thank you.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Madam President, thank you very much. I would start by thanking all contributors to this debate; both on this side of the House and on the other side. I must say that I found the contributions of Sen. Sadiq Baksh and Sen. Carolyn Seepersad-Bachan extremely good, but that is not to discount the other contributions. They seemed to me to be focused and pointed and so forth.

Obviously, I have to start with some of the issues raised by Sen. Carolyn Seepersad-Bachan, because they are fresh. One of the first points I think we need to note is that the Adam Smith Institute really slipped me in the beginning. When they came down, in fact they looked at the utilities, telecommunication as well as competition policy. The Senator is correct, because coming out of their work we have the Telecommunications Authority and we now have competition law. In effect, this is what it is. It went through some gestation—from the Adam Smith Institute, then to Maxwell Stamp and the Green Paper and so forth.

I found in the debate that there were those who were attempting to separate themselves from the legislation, telling me that what was important 10 years ago is no longer important today, because we are talking about globalization and liberalization. Madam President, we have been talking about globalization and liberalization for 20 years now. So when they come and tell me nonsense, I put it down for what it is. When they tell me that the PNM is 15 years behind, I find it unkind, but I should not be so unkind to the particular Senator. I would not say anything more on that. I shall not be unkind.

Let me go back to the issue raised by Sen. Carolyn Seepersad-Bachan about the human resource requirement. That is a valid point, and that is why the legislation talks about proclamation. After the legislation is passed there is quite a lot of groundwork that we have to do. Yes, we have to find people and we may not be able to find them in Trinidad and Tobago but, hopefully, we should be able to find Trinidadians and Tobagonians or Caribbean people somewhere in the world who have this knowledge. I think the Senator is doing quite well and, perhaps, she could be an understudy in the first instance at the commission, given that she attends this seminar on an annual basis.

Sen. Seepersad-Bachan: I just want to clarify a point. I do not attend the seminar on an annual basis. I attended the seminar once in 2000. I know of persons who attend on an annual basis.

Hon. K. Valley: I would like you to share that information with me because obviously we would need to have persons from my ministry going there.

The other issue that I found interesting was the issue of rule base, rather than a look-see, as it were. When we realized that we were new in this thing—at the same time, you are saying that we are brand new; we do not have the people and we have to find the people and so forth; and you are asking us to do like the European Community which has years of experience with this type of legislation, and given their experience, they could now define rules—we did not even know where to start. We cannot use a rule-based system at this time, we have to use a look-see—tread carefully until we know we feel the warmth of the water, as it were. That is what informed our decision.

As I said in opening, we should leave out the Telecommunications Authority as well as the financial sector. At present, they are under appropriate legislation and, therefore, let us start with the rest. Let us gather some experience and let us move incrementally rather than taking on the whole hog; trying to swallow too much. I hope the Senator understands that.

The Senator talked about the fees and charges in some parts of the Bill. I would say two things on that matter. Throughout the legislation there is an appeal procedure and one could go to the High Court. Secondly, unless a Bill has enforcement measures, then it is not an Act. It is the best of a policy position. If one could go into the commission and do whatever he or she likes—perhaps even slap one of the commissioners—and that person is not charged—

Sen. Seepersad-Bachan: That is a criminal offence.

Hon. K. Valley: What I want to know is what do you do when you have to ask for information? I know that Sen. Baksh did that. They told him to come to the commission of enquiry and he said that he was not going and he never went, and they did not do anything. *[Interruption]* We are going to look at it. I do not have a difficulty with it, but we need to have some type of sanction so that the commission could do its work.

Madam President, I do not intend to conclude my winding up this evening, because I would want to look at the issues raised on the other side. *[Interruption]*

Madam President: Sen. Dr. Gopeesingh, I have asked you to be quiet.

Hon. K. Valley: Madam President, I am saying that we would want to look at some of the concerns raised by Senators and, therefore, we would want to complete the winding up on the next occasion and then take the committee stage.

I want to assure Sen. Dr. Eastlyn Mc Kenzie that this legislation has nothing whatsoever to do with killing the small man. As a matter of fact, we would hope that the small man would prosper. I want to tell you that under our White Paper on procurement we have put in place a clear policy position that we would set aside 10 per cent of Government's contract for small businesses, and we are doing that.

Sen. Dr. Jennifer Kernahan made the point that mergers and conglomerates are formed every day in the United States of America. They are formed every day in an economy where there are laws relating to anti-trust and so forth. It is not that it is non-existent. This matter about globalization and liberalization does not prevent sanctions for those who abuse power. The fact that mergers and conglomerates could still be formed every day suggests to me that one could do business even in that environment.

Madam President, I think it was in the 1980s that Trinidad and Tobago was virtually an unrestrained legal environment for the non-banks and lots of people lost their money. The job of a government, at any time, is to balance the freedom of the businessman to conduct his affairs and, at the same time, to protect the society and consumers against the unscrupulous. What we are saying is that all laws of this nature are, what my old man used to say, peradventure—meaning for those who want to go to the edge.

I made the point earlier today that all of us are subject to the integrity legislation and we prefer that they would leave us alone and let us just go about our business, especially now. I have been completing integrity legislation forms since 1987, but in the last two years, I do not know what has happened with that place. There are actually all kinds of questions.

Hon. Senator: Stop it.

Hon. K. Valley: It is true. The point is as long as you conduct your business properly—yes, it is a bother but if you know that you have to do it at the end of May, then you have to do it. Similarly, we made the point that this legislation is not going to stop mergers; it is not going to stop monopolies. The whole purpose of the legislation is to stop those who are going to abuse power. That is what it is about. It might be an inconvenience, but it is an inconvenience with which we have to live for the better orderliness of society. That is what it is.

Madam President, as I said, I would want to continue.

ADJOURNMENT

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): Madam President, I seek your permission to amend the Motion which I moved earlier on the adjournment of the House to facilitate a matter on the adjournment.

Adjournment
[SEN. THE. HON. YUILLE-WILLIAMS]

Tuesday, May 02, 2006

I beg to move that this Senate do now adjourn to Tuesday, May 09, 2006 at 1.30 p.m. On that day we would debate the Bill to validate the Fifth Report of the Elections and Boundaries Commission under the Elections and Boundaries Commission (Local Government) Act, Chap. 25:50; a Bill to amend the Financial Institutions Act, 1993 and, if we have time, we would debate the Bill to amend the Tourism Development Act, 2000.

Madam President: Hon. Senators, we have a matter on the adjournment. Are we taking the two matters or one?

Sen. Baksh: Madam President, the hon. Minister was here, but he has another appointment, and I agreed to do it next week.

Madam President: Okay, so we would be taking one matter. Hon. Senators, leave has been granted for a matter to be raised on the Motion for the Adjournment of the Senate by Sen. Carolyn Seepersad-Bachan. [*Desk thumping*]

7:30 p.m

Government's Failure to Protect Groundwater Sources

Sen. Carolyn Seepersad-Bachan: Thank you, Madam President. The matter to be raised is the failure of the Government of Trinidad and Tobago and its state enterprises, the Water and Sewerage Authority (WASA) and the National Petroleum Marketing Company Limited (NPMC) to take the necessary preventive measures to protect the country's groundwater sources.

Madam President, let me start by quoting from the business section in the *Trinidad Guardian*. This is MTBE polluting water, the Environmental Management Authority. I have checked the *Trinidad Guardian* report against the EMA report, which was provided to me from the EMA here in the Senate this afternoon, and it was done by CARIRI and it says the same thing. Let me just read from the *Trinidad Guardian* because it summarizes it nicely. It says:

"A report commissioned by the Environmental Management Authority has found evidence that the fuel additive MTBE has contaminated ground water sources throughout T&T.

The ground water quality assessment report commissioned by the EMA indicates that leaking underground storage tanks have contaminated drinking water in several communities in T&T.

Based on the report's findings, leaking underground fuel storage tanks pollute ground water thereby affecting both WASA production and observation wells.

The report documents..."

And this is important.

"MTBE and BTEX (benzene, toluene, ethylbenzene...) gas additives were appearing in WASA wells in Diego Martin, El Socorro, Curepe and Charlotteville and Roxborough in Tobago."

I am sorry the Members for Tobago left.

We all know that MTBE is the oxygenate that has been added to fuels to ensure that there is a clean burning of gas. But I wonder if you recall that in October 2003 when the Government expressed its intention to move towards fully unleaded fuels, I raised the issue during that budget debate. Then the week subsequent to that, on October 28, I raised the issue again, when they brought the Excise Order to the Senate for the increase of fuel prices. I expressed to both the Minister of Finance, Conrad Enill and Christine Sahadeo the importance that if they are moving to unleaded fuel and they are moving towards this demand for unleaded fuel that they take stock of what is happening with National Petroleum (NP) with respect to underground storage tanks.

I went through at that point in time, and I repeat because I pulled back up the budget statement. It is too long for me to go through but I could just summarize it. The bottom line is that when we took office in 1995, and this was brought to our attention about underground storage tanks that were leaking, the NPMC was mandated by the UNC government to start an aggressive replacement tank programme. That aggressive replacement tank programme was not just another matter of putting down underground storage tanks, any form. It was a requirement at that time that we install what we call double wall underground storage tanks. That is, there are two walls so that in the event that there is any structural defects to the inner wall or if there is a leak, you still have an outer wall to protect it and there will be an alarm system, a leak detection mechanism, because the entire station now, must be outfitted with the leak detection mechanisms.

Added to that, there must be double wall piping, because we did not want, if you are putting down an underground storage tank and you put down a double wall, spend that kind of money, to have leakage along the line. The reason for that was in anticipation of moving towards this increased use of unleaded fuel with MTBE as an additive.

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Madam President, probably I can just share with you what had happened in California and those places. As far back as 1991 it was being detected that MTBE was a carcinogen and had harmful effects if it gets into drinking water and in the environment as well. Madam President, you are a medical doctor, you would know. You see, MTBE is a hydrocarbon which gets into our groundwater mainly because of these leaking tanks, but it moves so fast and it does not adhere to soil. If you compare it with any other of the additives, this moves so fast into your groundwater, once it leaks it finds its way into watercourses.

I clearly stated it then, because we were apprised at the time when we were told about moving to unleaded. I agreed and I said it in 2003, that the UNC government had signed the agreement with OLADE that we would move to unleaded, but we had taken steps to say okay, we cannot move as quickly based on the findings that were taking place in California, that is, when MTBE gets into your watercourses it moves so quickly, it is difficult, it is almost impossible to remove MTBE from groundwater. Once it contaminates your groundwater resources it could take 20 to 30 years to clean.

In fact, in the US you now have several alternates; the California government had to import drinking water, because they had to condemn many of their groundwater sources. I do not know if we go to condemn groundwater sources in Trinidad and Tobago where we are getting drinking water from. So, that was why I was extremely careful and I took the time out to tell this Senate that one of the immediate things that they have to demand of NPMC is what are they doing about their tank replacement programme.

Madam President, in fact the tank replacement programme is not one of just replacing a simple tank, as I explained before, and that is why it was part of the service station upgrade. Because as you replace the underground tank, you replace it with the double wall; you are putting the double wall piping; you install this sophisticated leak detection mechanism that shuts down your station the minute it starts to leak into that second chamber. It is not even contaminating the environment, but your station would shut down and immediately you have to alert the authorities, so they can do their checks.

In addition, the replacement of these tanks as a result of that, a requirement is that they must clean up the soil, because if you are removing that tank then you must clean up the soil, that is, remove all the soil and have it remediated. Madam President, you would recall at that point in time I also explained the expensive process, but it was one that had to be done. We had set up a site in La Brea, on the LABIDCO site to allow the remediation, the removal of lead and hydrocarbon out of this soil, and these were the complexities involved.

Now, I want to say first of all, that we knew at that point in time when we took those decisions—that was in 1999/2000—there was not as much reliance on groundwater. But at that time we were made aware that there would have been an increased reliance on groundwater, because you have a distribution network. The losses in there are almost about 50 per cent, and because of the cost to repair that distribution network and the time line for it, there would have been an increased reliance on groundwater sources.

In the case of Tobago, let me just say, it was even at that point in time, close to 50 to 60 per cent. So you are depending on groundwater as drinking water as much as 50 to 60 per cent.

I think I have said what I had to say about MTBE, I think we know the dangers. Where do we go from here is what I want to know? What are your solutions? Who is going to be held liable for this? Are we going to give liability shields now? I think some people need to be accountable for this, because we have been warning about this for the longest while. One of the things that I know that have been tried in the US—and let me just say that right now in California and so on, in 1999—I think it was—2001, the Californian state government applied to the Bush administration to get that waiver from their having to put MTBE into their gasoline because of the problem it was posing for their groundwater, and they said no, because you have to have an additive to get the clean air. Therefore, their only alternative was to move to ethanol and they moved to ethanol as an additive.

Across the US, many of the other states that encountered this problem with MTBE in water eventually started banning the use of MTBE. Today, as we stand here, the Congress of the United States is now looking at a national ban. So MTBE may no longer be used in gasoline. These were the issues that we warned about in terms of moving forward with this MTBE. We had seen the facts; the data was coming out, and we said let us slow this process of going into MTBE into fuels. What are the solutions? In other countries they have diluted the MTBE; they looked for clean sources and they have diluted the contaminated source with the clean source in order to reduce the concentration levels. But the problem with that, even if we try that, I do not know what alternative sources we are using to clean this with.

Secondly, the jury is out as to what are concentration levels. Because I would say to you it is a carcinogen and they have detected in rats, mice and so, the complications of leukaemia. As you would know, these rats and mice in these test laboratories have come up with leukaemia, tumours and the works, et cetera, with these aromatics, benzene and so on.

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Madam President, it is costly. I know they have been trying to use these carbon sponges to absorb it. They have not tried it thoroughly and it is expensive. I do not know if the cost of it is coming down. My last taking on any removal methods or removal of MTBE is that it was prohibitive so that you just condemn your water source and wait 20 to 30 years until it cleans itself. I would like to know what WASA is doing at this point in time and more so the Environmental Management Authority. I want to know if they are condemning these water sources because it is important that our citizens do not continue to consume this, and that it does not find its way until we know for a fact.

These are some of the issues that I wanted to raise with respect to that. Before I get to where we should take some sanctions on this whole issue, let me just ask: What are the steps being taken by the EMA to further detect? I know this report is an old report—it is two years old or so—and if these are the concentration levels that you have detected, I would like to know if you are doing a continuous monitoring. Get some bore holes in there; get the NPMC to take up that course and that action to make sure that we know what are the correct levels, because that was two years ago and those tanks continue to leak, which I am sure they are leaking if they were old tanks that they put this unleaded in. It is probably at higher concentration levels now. Have we condemned those sources?

What the Minister should do right away through the EMA—I do not know what their relationship is—is talk to the Minister of Energy and Energy Industries and find out what instructions are being given to NPMC; to find out what tanks they have that they are putting MTBE as an additive into, that are not double wall tanks. They must be able to do an inventory of all their storage tanks; what are double wall; what are not; what are the stations that have leak detection mechanisms and any station that has a steel tank that has not been renewed, it is not a new one, and even if it is a steel tank, stop the use of that station immediately, so that we can stop the level of contamination.

Madam President, I think NPMC needs to come up now with a proper tank replacement programme, an aggressive tank replacement programme and they need to let the nation know that they are going to do that, because at the end of the day they are contaminating the watercourses.

The other issues that I wanted to raise: Are we going to move away now from the MTBE? Is the Government looking at probably following suit and eliminating MTBE as an additive to our fuels? I know Petrotrin has an MTBE plant. Is it that we can move to an ETBE plant using ethanol? Are we looking at ethanol as an additive instead, as an alternative? What are the alternative fuels? Are we going

to move toward CNG to eliminate this problem? I know for a fact that we are importing ethanol into this country, so probably the Minister could share with me, if there have been any discussions on that issue. I am really interested at the end of the day as to where are we going from here.

I thank you.

The Minister of Public Utilities and the Environment (Hon. Penelope Beckles): Thank you very much, Madam President, and let me thank my colleague. In response to her Motion on the Adjournment, I would like to make the following statement.

Madam President, the Water and Sewerage Authority (WASA) through the Water Resources Agency conducts ongoing monitoring of quality of the country's groundwater sources, utilizing what is called observation wells at strategic locations. This ongoing monitoring allows WASA the ability to detect and respond in a timely manner to threats or instances of contamination of the country's groundwater sources. Now as to the protection of the groundwater sources of Trinidad and Tobago, the responsibility is shared between the Water Resources Agency, which is a division of WASA, and the Environmental Management Authority (EMA). The Water Resources Agency through the WASA Act, 1965 is mandated to protect and conserve the water resources of the country, whilst the EMA is mandated to control and manage water pollution from various sources.

As you indicated in 2001, WASA in collaboration with the EMA and National Petroleum initiated a study to monitor the quality of surface and groundwater sources in Trinidad and Tobago. The contaminants investigated were lead THMs, which is Trihalomethanes, BTEX, that you mentioned, benzene, toluene, ethylbenzene, exelene and MTBE, which is methyl tertiary butyl ether. The levels of these parameters measured at that time were within internationally acceptable standards and guidelines for drinking water as established by the United States Environmental Protection Agency (USEPA) and the World Health Organization. The study also included the establishment of temporary bore holes in the vicinity of gasoline stations in order to detect the presence of leaking underground fuel storage tanks. The results of this study indicated that levels of contamination found were attributable to activities in the vicinities of the temporary bore holes.

Now subsequently, an expanded sample exercise was conducted over the period December 2002 to January 2003 on groundwater sources currently in use for water production by the WASA. In this regard, a total of 15 permanent wells and 13 temporary bore holes in Trinidad were sampled. In Tobago, five

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permanent wells and four temporary bore holes were also sampled. This comprehensive programme analyzed a total of 850 samples involving 15 parameters relevant to potable water quality. Of the 20 permanent wells and the 17 temporary bore holes sampled, none showed levels of contamination outside the internationally acceptable limits.

Further, in 2003 and 2005 the EMA continued with its water quality assessment programme and expanded the 2001 study to include a wider coverage of Trinidad and Tobago, focusing on the assessment of MTBE and BTEX in groundwater at selected gas stations, as well as potable water supply managed by the Water and Sewerage Authority. The most recent report is that of August 2005, and indicates that levels of MTBE and BTEX found in the groundwater supplies for potable use were all within the acceptable USEPA and World Health Organization standards and guidelines for drinking water.

In addition to monitoring activities undertaken by WASA and EMA, NP also has programmes and systems to monitor and prevent the contamination of groundwater from pollutants emanating from both operating and closed gasoline stations. And if I could just say exactly what that includes.

First of all, you have a secondary containment system. NP has embarked on a phased upgrade of its underground fuel storage in order to prevent or minimize groundwater contamination. This upgrade involves replacement of existing single wall tanks with a new underground fuel storage system, which has double wall tanks and lines overfill protection and overspill containment. And I think that is what you indicated that you were concerned about.

Environmental Investigation. NP was also given a mandate by the Government through the Standing Committee on Energy to further investigate the soil and groundwater for hydrocarbon impacts. As such, NP launched its Network Remediation Programme in September 2004 and you indicated that you had raised it in your budget contribution in 2003.

The objective of this programme is to determine the extent of any contamination at all sites and clean up these sites if contamination is encountered. The approach to the assessment was developed along with the EMA and the Ministry of Energy and Energy Industries. So the concern that you spoke about a while ago in relation to the Ministry, the EMA and the Ministry of Energy and Energy Industries, I would like to say that actually started in 2004, and therefore what NP has been involved in is based on the directive from the Environmental Management Authority. I would like to say to date, that a total of 72 sites were investigated by independent consultants and the work is ongoing.

NP has also an improved environmental monitoring scheme and you referred to the recommendation as it relates to the double wall tanks. Double wall tanks facilitate the monitoring of the space between the walls of the tanks, and as such, these tanks are under continuous electronic surveillance for leak detection. Pending tank replacement, NP's programme of inventory control manages its older tanks and facilitates the detection of leaks there. Additionally, over 80 groundwater monitoring bore holes have been installed at gas stations within the last two years.

As it relates to spill management, environmental performance has also been improved through the introduction of new service station equipment, which minimizes spills. For example, new dispensers have non-drip nozzles; fuel hoses are designed to automatically seal when accidentally broken and spill kits have been introduced to allow for fast and effective clean-up.

As it relates to risk reduction, in 2004, NP in conjunction with the Trinidad and Tobago Petroleum Company Limited implemented the removal of lead from gasoline products in accordance with the National Environmental Policy, which reduces the risk of lead contamination to groundwater sources. And, Madam President, that National Environmental Policy was laid last month in this place.

Madam President, what is important as it relates to the concerns raised by the hon. Minister, sorry Senator—well I might be anticipating [*Interruption*] You would not miss that one, "eh"? It is to be noted that a certificate of environmental clearance is required prior to the replacement of an underground storage tank. This is to ensure that the removal of the old tanks and the installation of the new tanks and remediation of any contaminated soil are conducted under the supervision and guidance of the EMA and the Ministry of Energy and Energy Industries.

So again, you would see that your concerns have been dealt with and therefore once they apply to have the removal of the tanks, the EMA actually specifies how it is to be done, supervises it and they then are to ensure together with the EMA and the Ministry of Energy and Energy Industries, that you have the proper removal and installation of the new tanks.

So that whilst you mentioned the point about the expedition and these matters being dealt with a lot quicker, I think we understand that it is not the kind of process that we would like to have dealt with very quickly because of what is involved.

The Government through its agencies is committed to remain vigilant against any form of pollution that may affect both surface and groundwater sources, through ongoing monitoring and assessment programmes, in order to safeguard the health of the population. We recognize that there are many sources of groundwater pollutants from manmade activities, including landfills, underground fuel tanks, domestic sewage,

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agricultural activities, as well as farm waste. I am confident though, that the efforts of the Government of Trinidad and Tobago in the areas of landfill rehabilitation, service station remediation programmes, introduction of lead free gasoline and the vigilant monitoring of groundwater quality by the Environmental Management Authority would result in the protection of this resource.

Madam President, I did announce last month as well, the Government's decision to deal finally with the issue of landfills, to remove some of the landfills where appropriate and to find another system as it relates to waste disposal. It is worthy to note that these sources of groundwater pollution and the resultant impacts of groundwater are not unique to our shores. The hon. Senator shared some of the examples, but I want to say that as an example, the United States has recognized that approximately 70 per cent of their underground storage tanks were leaking, and therefore found it necessary to embark on an aggressive tank replacement programme, similar to that being undertaken by the Government of Trinidad and Tobago.

I am confident that any health related and other threats associated with the ongoing exploitation of the country's groundwater resources for potable use can be detected and properly managed. I would like to let the hon. Senator know that as it relates to MTBE, no MTBE was found in the potable water sources. Also, in terms of the work done by NP to date, 50 per cent of the underground storage tanks have been replaced with double wall tanks; that is as I speak, this month. *[Interruption]* Well, that is the figure they have given me, but as I said, the process is ongoing.

Additionally, in support of the ongoing initiatives, the general public must remain vigilant in safeguarding against pollution, as well as waste disposal threats to the continuing availability and integrity of the country's groundwater. I also take the point made by the hon. Senator as it relates to educating the public about exactly what this process is; what has been done over the last couple of years, so that they would be aware that this programme is existing and what are their own precautions that they should take since this programme is being undertaken.

Madam President, I would like to close by thanking the staff of the EMA, my Ministry and NP who assisted me in preparing this response.

Thank you.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.00 p.m.