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USING MARKET STUDIES TO TACKLE EMERGING COMPETITION ISSUES – Contribution from CARICOM

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This contribution is submitted by CARICOM under Session IV of the Global Forum on Competition to be held on 7-10 December 2020.

More documentation related to this discussion can be found at: oe.cd/mktcomp.

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Using market studies to tackle emerging competition issues

- Contribution from CARICOM -*

1. Introduction

1. An important directive of the CARICOM Competition Commission (Commission) is to promote and protect fair competition within the CARICOM Single Market and Economy (CSME).¹ The Commission also has the mandate to support the CSME Member States in the enhancement of consumer education and welfare, through research and collating data on consumer issues. To fulfil these obligations, the Commission must, therefore, fully comprehend how various product markets work in the region. Hence, market and economic studies have become a significant part of the work of the Commission since its establishment.²

2. The conduct of market studies is more significant than ever during the novel coronavirus (COVID-19) pandemic. This is due to three major factors: firstly, the need to understand the reasons for the speed and magnitude of prices increases in markets across the region, and specifically those for food and health-related products; secondly, in response to reports in various CSME Member States of deceptive sales practices that could adversely affect competition on markets and consumer welfare; and thirdly, where investigations are deferred, market studies along with competition and consumer advocacy could be a cost-effective ex-ante competition enforcement mechanism.

3. This brief for the Global Forum on Competition highlights the importance of market studies during the COVID-19 pandemic by discussing a current study being conducted by the Commission on scheduled air passenger transportation services in the region. The brief presents the rationale for the study in the context of the pandemic and its scope. It also outlines the way forward for the study.

2. Rationale for the airline study

4. The CSME has not been left unaffected by the novel coronavirus (COVID-19) pandemic. Economic activity in most CSME Member States remains sluggish due to their tourism industries being affected by national policies aimed at protecting the public health by imposing borders closures and restrictions, and postponing cultural events such as carnival, and major sporting events. With tourism being one of the main drivers of growth in the region impacted by the pandemic, the IMF projects economic growth for the region, excluding

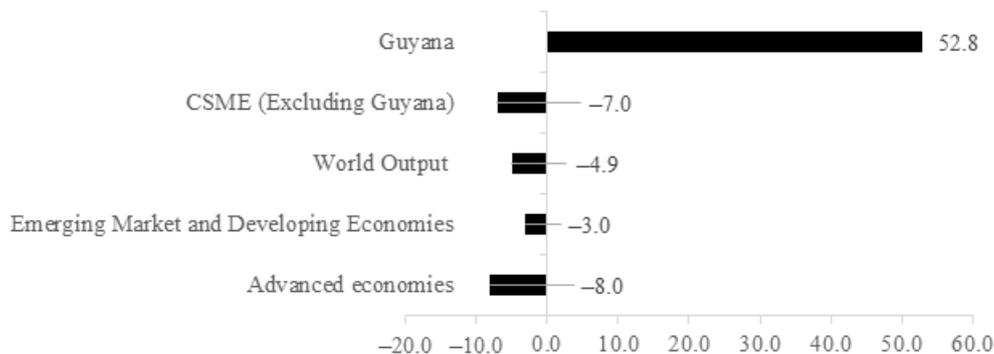
* Contribution from the CARICOM Competition Commission.

¹ The CSME comprises the Member States of CARICOM except The Bahamas. The countries are: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago.

² Over the years the Commission has conducted studies on the mobile, banking, and alcoholic beverages sectors. These studies have also been conducted with specific attention paid to the demand or supply-side of the markets in question.

Guyana, will be -7% at the end of 2020. This is lower than forecasts for the world economy and emerging market and developing countries (see **Figure 1**).³

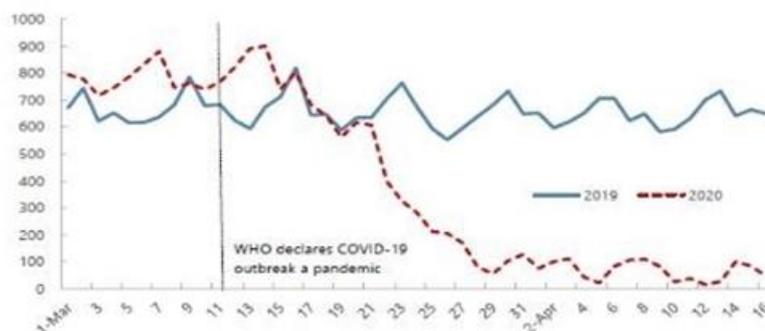
Figure 1. Comparison of 2020 Economic Growth Forecasts for the CSME and other regions



Source: IMF data

5. Given that airlines are the main mode of transportation for intra-regional and extra-regional long-stay tourist arrivals and business travel in the region, the decreased number of airline flights because of COVID-19 has resulted in significantly lower revenues for the airline industry (see **Figure 2**). Regional airlines have responded to the financial challenges by furloughing staff and relying on charter flights and air cargo services. One regional airline is also now undergoing a financial re-organisation given its insolvency and need for financing and debt restructuring.⁴ Situations like these have led the International Air Transport Association (IATA) to urge governments across Latin America and the Caribbean to consider relief measures for airlines, as they continue to confront the effects of the pandemic.

Figure 2. Number of Daily Inbound Flights to the Caribbean (1 March to 16 April 2019 and 2020)



Source: Srinivasan et al. (2020)⁵

³ For most countries across the globe, the IMF revised their growth forecasts for 2020 downwards. Before the pandemic, the initial growth forecast for Guyana for the end of 2020 was 86%.

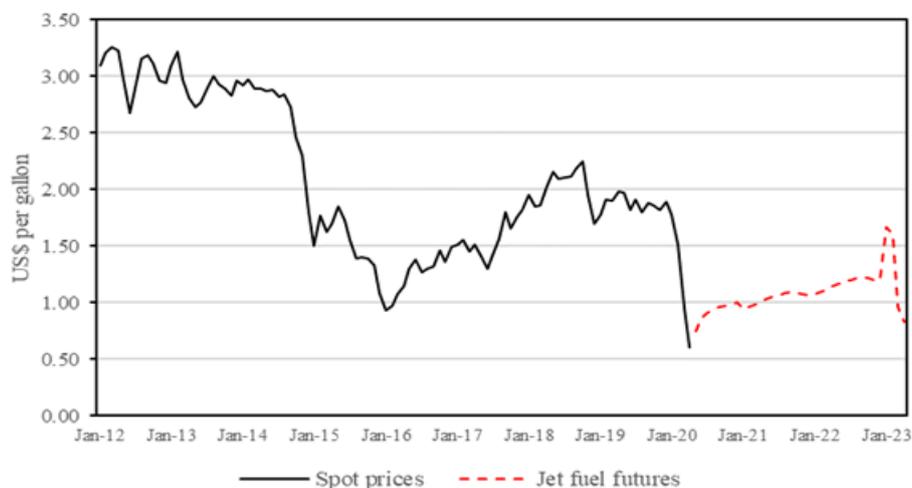
⁴ <https://www.nationnews.com/nationnews/news/246865/court-grants-petition-reorganisation-liat>

⁵ Srinivasan et al. (2020). "COVID-19 Pandemic and the Caribbean: Navigating Uncharted Waters", IMF Blog.

6. The weakened operational and financial position of the regional airlines raises three areas of concern for the Commission, which motivates the market study. The first issue relates to the strategy of the airlines operating in the region steering customers toward the option of obtaining future flight credits for flights cancelled due to COVID-19 instead of offering them refunds. Some jurisdictions condemn this practice and maintain that airlines must provide a prompt refund to passengers when cancellations to scheduled flights occur and the passenger chooses not to accept the alternative offered by the carrier. Other regulators have also rejected calls from airlines to relax refund rules.⁶ The market study, therefore, examines the experiences of customers within CARICOM that sought refunds from airlines operating in the region, after cancelling their travel plans because of COVID-19. It will also examine this issue from the perspective of the subsisting legal framework in the region so far as it may concern air passenger rights.

7. The second issue relates to concerns over possible excessive post-pandemic airfares as the airlines servicing the region seek to recoup losses incurred from flight cancellations during the virus outbreak. Following the pandemic, several factors will apply upward and downward pressure on prices. Upward pricing pressures could include flights with fewer passengers to maintain social distancing requirements and increased sanitisation of aircrafts. The increased unit cost per passenger from these strategies could lead to increased airfares. Downward pricing pressures, however, could include a weak demand for air travel (particularly in the first few weeks after flights resume), low fuel prices (see **Figure 3**), and vigorous competition between the airlines on markets. If competition in airline markets is robust, prices should remain at competitive levels. The market study will focus on the competitive environment of the airline markets from the demand and supply, to determine whether market power exists in relevant markets, and entry barriers, and if competition is likely to create a downward pressure on airfares in the region when airline customers deem it safe to travel.

Figure 3. Jet fuel spot prices from April 2012 to April 2020 and Jet fuel futures after



Source: Indexmundi.com, Platts.

⁶ See US Department of Transport Notice on Air Carrier Refund Requirements Given COVID-19 at <https://www.transportation.gov/briefing-room/us-department-transportation-issues-enforcement-notice-clarifying-air-carrier-refund> and the statement by EU Transport Commissioner Adina Vălean on the Commission's Response to COVID-19 and its Effects on the Transport Sector at https://ec.europa.eu/commission/commissioners/2019-2024/valean/announcements/speech-commissioner-valean-commissions-response-covid-19-and-its-effect-transport-sector_en

8. The third area of concern is the existing legislative and regulatory framework for scheduled air passenger transport in the region. The study will focus on competition and consumer protection issues and make recommendations to government, sector regulators and or stakeholders operating within the sector that if implemented would encourage greater competition and more efficient economic outcomes.

3. Scope of the Market Study

9. The Commission will be analysing the scheduled air passenger transportation sector in the CSME from the perspective of competition, and consumer advocacy consistent with Articles 173 and 186 of the RTC. The study is expected to combine a review of the regulatory framework with the analysis of market structure, behaviour and incentives of operators, and the economic conditions that exist in the sector. The Commission is working closely with national competition and consumer protection officials in the CSME to execute the market study in a comprehensive manner.

10. There is a close relationship between air transportation and tourism in the region. As such, there are several related markets that exist between the two industries, such as tour operator and travel agent markets. The study, however, will focus only on scheduled air passenger transportation in the region and does not consider the tourism industry or the related markets between air transportation and tourism industries. Further, the supply of air transportation for goods within the region is beyond the scope of the study.

11. The scope of the study was chosen given:

- The number and complexity of the related markets between the air transportation and tourism industries in the region.
- The supply of air transportation for goods within the region has not been disrupted by COVID-19 and warrants no immediate concern.
- The need for baseline information on scheduled air passenger transportation in the region since limited information on the industry is available from the competition and consumer perspectives.

4. Conclusion and way forward

12. The Commission recognises the need to conduct market studies during the pandemic to gain a better understanding of markets in the CSME. Moreover, in a pandemic environment where investigations are deferred, market studies could be an effective ex-ante competition enforcement mechanism.

13. It is in this regard that due to several concerns surrounding scheduled air passenger transportation markets, the Commission commenced a market study, which it expects to complete in November 2020. Already, several chapters of the study that required desktop reviews have been drafted, including a survey of past studies conducted on the airline industries in CARICOM, the relevant markets considered, and a review of air passenger rights in the region.

14. The next phase of the study will include data gathering. The Commission has developed survey instruments for airline customers, airlines, travel agents, and airport authorities. The survey of these stakeholders began in September 2020. The survey instrument for airline customers will be administered strictly online to potential respondents.