



COMPETE

FAIR TRADING COMMISSION

Promoting Competitive Markets

Vol. XX, January 2016

Competition in the retail sector *Is the consumer still King?*



- ❖ Jamaica Hosts 2015 Latin American Competition Forum
- ❖ Crumbs of Truth: Misleading Advertising in the Marketing of Bread
- ❖ Putting Consumers First Makes Markets Work
- ❖ Petrol Conservation Tips for Motorists

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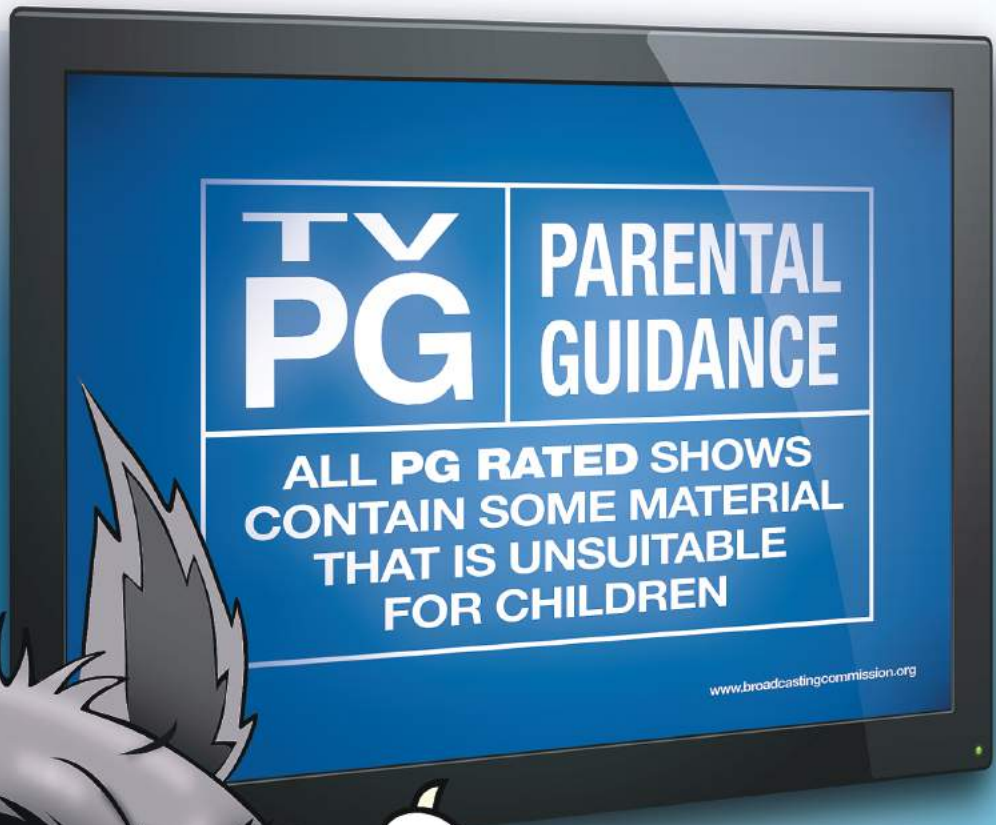
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Competition Matters, published annually by the FAIR TRADING COMMISSION, has been rebranded as “**Compete**”. This magazine highlights aspects of Competition Law and Policy in Jamaica; and it is distributed free of charge to readers in Jamaica as well as overseas.

ISSN 0799-3862

Printed by:

BCNS Printers Limited
8 Norton Drive, Kingston 10.
Email: bcnsprintersltd@gmail.com

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Opinions and views expressed in **Compete** are those of the writers, and not necessarily those of the Fair Trading Commission, the Government of Jamaica or organizations with which the writers are affiliated.

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Compete

Compete represents the shift in focus of the FTC: a developmental-centered focus on the promotion of competition. As indicated by Chairman Samuda in his *FTC 20th Anniversary Message*, “our commitment to infuse the spirit and letter of the Fair Competition Act ... is simply not only regulatory, it is developmental and capacity building”. **Compete** will therefore highlight not only the work of the FTC but also initiatives by the private sector and the Government considered to promote competition, improve productivity and increase consumer welfare. It will focus specifically on competition-based activities that are geared towards economic growth and national development for the prosperity of all Jamaicans.

Foreword

In this issue of **Compete**, we explore the theme “*Competition in the retail sector: Is the consumer still king?*” with the aim of highlighting the role of consumers in promoting competition in retail sectors.

The mission of the FTC recognizes consumers as kings as the Commission was established to maintain and encourage competition in the conduct of trade and the supply of services in Jamaica with a view of providing consumers with competitive prices and product choices. Therefore, consumers are the ultimate beneficiaries of competitive markets.

In a typical economy, the aim of suppliers is to maximize profits and consumers are vital for this aim to be achieved. Therefore, suppliers compete for consumers through pricing of products, innovation, customer service and quality of products. If consumers are displeased with any aspect of a good or service provided by a supplier, they may switch to another supplier. In this sense, consumers have ‘kingly’ status. Notwithstanding this, the Fair Trading Commission encounters complaints from consumers being treated less than ‘kingly’ by suppliers. This begs the question therefore as to whether the consumer has been dethroned.

The articles contained in the magazine focus on consumer matters and touch on several topics including the impact of media content explosion on consumers, consumers’ choice in the groceries sector and the impact of consumer demand on the motor vehicle insurance industry. We have also included an article from the regional competition authority.

In addition to the articles, the magazine contains some of the matters we have undertaken in 2015, including the hosting of the 13th annual meeting of the Latin American Competition Forum.

We know you will enjoy this issue of **Compete** as much as we enjoyed putting it together.

Happy reading!

Kristina Barrett-Harrison & Paul Cooper

Magazine Coordinators

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FTC gives conditional approval for amalgamation of media companies

Having reviewed an application for the amalgamation of the assets of Jamaica's leading media entities, the Fair Trading Commission (FTC) approved the proposed transaction conditional on the amalgamated entity undertaking prescribed steps which the FTC believes will mitigate the potential adverse effects while preserving the potential benefits of the proposed transaction. The two media entities are Radio Jamaica Ltd ('RJR') and the Gleaner Company Limited ('Gleaner'); and the proposed transaction will result in the media-related assets of Gleaner being hived-off to RJR.

The FTC concludes that the Gleaner held leading

positions on the Internet and newspaper media platforms whilst RJR held leading positions in radio, television and Internet platforms; and that the proposed transaction raises significant competitive concerns in the markets/sub-markets where there is a significant overlap of the two entities: (i) The Internet based media sub-market; and (ii) the advertising service market.

Noting that RJR and Gleaner are the leading providers of Jamaican-themed content delivered over the Internet, the FTC states that the proposed transaction is likely to harm subscribers of this service given that there will likely be a reduction in the incentive for the amalgamated entity to engage in research and development of new products on this platform.

Also, media entities such as RJR and the Gleaner compete in the advertising service market with independent advertising agencies which rely on media entities for a crucial input- advertising media space. The FTC therefore concludes that the proposed transaction would give the amalgamated entity a significant control of media audience across multiple platforms. This would increase the incentives and opportunities for the amalgamated entity to engage in anticompetitive discriminatory conduct in the downstream market by raising costs for independent advertising agencies to acquire advertising media space.

Adherence to the FCA required in revised motor vehicle policy

In September 2015, Mr. David Miller, Executive Director of the Fair Trading Commission (FTC) participated in the motor vehicle policy public consultation forum hosted by the Ministry of Industry Investment & Commerce, in Kingston. The purpose of the forum was to sensitize consumers about the revised Motor Vehicle Policy which came into effect in April 2014 and to discuss issues affecting consumers and businesses in the industry.

The new Policy introduces measures in conjunction with the modification of other specific guidelines governing the importation of motor vehicles. With respect to the mandate of the FTC, it describes in

greater detail the process for vehicle year designation; the approved methods for determining model year; and specifically requires that motor vehicle dealers comply with their obligations under the FCA.

Mr. Miller spoke on the changes in the Policy as it relates to the Fair Competition Act (FCA), as well as on the May 2015 Court decision on the model year matter and the manner in which the decision is likely to affect the operations of used car dealers in their dealing with consumers. He also addressed several issues that affect motor vehicle dealers directly such as, dealers' liability with respect to representations made and reasonable expectations of consumers as well as the types and extent of warranties that are offered to consumers.

FTC wins model year case against car dealer

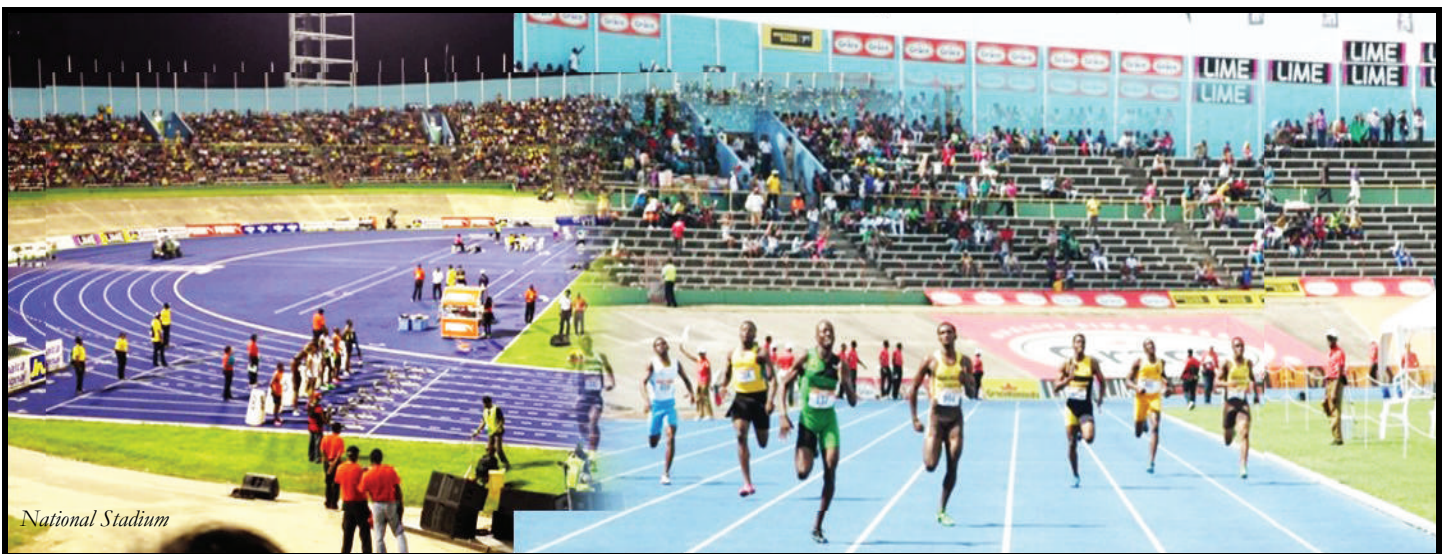
On May 22, 2015 the Supreme Court delivered judgment in the case of Fair Trading Commission v Crichton Automotive Limited. In its judgment the Court found that Crichton Automotive Ltd (CAL) is liable for misleading representation under section 37 of the Fair Competition Act.

The case had arisen upon the FTC's investigation into an allegation that CAL had misled a customer regarding the model year of a Nissan Sunny motor car. At the time of sale, the car was represented as a 2007 model, but subsequently, valuers, the Island Traffic Authority and Fidelity Motors Limited, the authorized Nissan

dealer in Jamaica, confirmed that the motor car is in fact, a 2005 model.

The Court imposed a penalty of \$2 million dollars against CAL for breach of the FCA; and awarded costs to the FTC. In doing so, the Court indicated that it was concerned that CAL had refused to take responsibility for the error. In that regard, there was evidence before the Court that even when CAL was presented with confirmation of the correct model year, it refused to resolve the matter, thereby making court action necessary.

The FTC is currently preparing other model year cases for litigation against other car dealers.



FTC signs consent agreement with ISSA

The FTC entered into a Consent Agreement with the Inter-Secondary Schools Sports Association (ISSA) in relation to the 2015 ISSA Boys and Girls Championships. ISSA had issued several advertisements inviting members of the public to

purchase tickets to see the event. The Staff of the FTC became aware that some ticket holders who turned up at the National Stadium were denied entry to the venue where the Championships were being held.

Having investigated the matter, the FTC concluded that ISSA had breached Section 37 of the Fair Competition Act which prohibits businesses from making to the public, representations that are false, misleading or likely to be misleading. ISSA agreed to settle the matter in accordance with the Fair Competition (Notices and Procedures) Regulations 2000, by way of a Consent Agreement wherein ISSA was required to pay the FTC's costs and to issue a public apology. The apology appeared in the Daily Observer of November 17 & 21, 2015.

2004 petroleum sector Code of Conduct reviewed

In 2004 the FTC published a Code of Conduct for the petroleum sector after concluding an extensive study of the sector, which included discussions with stakeholders. Conditions have, however, changed since 2004 and consequently, in 2015 the FTC together with the Ministry of Science Technology Energy & Mining undertook a review of the Code of Conduct.

The Code was revised with a view to improve the competitive process within the petroleum industry and ultimately increasing consumer welfare. The 2004 Code comprised thirty five recommendations divided into eight categories: viability of business, duration of contract, disposal of property, compensation for termination, notice of termination or non-renewal, display of pump prices, price discrimination, predatory

pricing, and obligation of wholesaler.

In the revised Code, the recommendations are divided into two main areas: those recommendations, which the FTC believes are still useful to the competitive process of the industry and those which it feels are no longer beneficial. The sustained recommendations are further divided into high priority and low priority. Recommendations categorised as high priority seeks to ensure a level playing field for retailers. Recommendations listed under low priority seek to address the ease of doing business and lower uncertainties for both retailers and wholesalers.

Overall, the revised recommendations, if implemented, could achieve greater efficiencies in the market, lower prices and increased choices to consumers.



FTC collaborates on education sector transformation programme

The FTC was invited to collaborate with Jamaica Tertiary Education Commission (J-TEC), which has been mandated to regulate the tertiary sector with the aim of creating a world-class system of higher education. In late 2014, the Ministry of Education, as a part of its Education Sector Transformation Programme tasked J-TEC with the responsibility of registering and monitoring entities at the tertiary level.

To date, the FTC has participated in stakeholder meetings and commented on the J-TEC Draft Bill, J-TEC proposed registration form and tertiary education provider standards. The FTC's comments were

informed by the nature of complaints received regarding tertiary level education. The main areas of complaints are matters relating to refunds, accreditation, registration, categorization, certification, job placement and class schedules/timetables. For majority of the complaints, the allegations were that the institutions misleadingly represented their registration or accreditation status or failed to provide adequate information regarding refunds and other policies.

The FTC welcomes the move towards the implementation of standards for tertiary level education and believes that J-TEC will serve a vital role in the transformation of the sector.



Report of the Thirteenth Annual Meeting of the Latin American Competition Forum (LACF)

Montego Bay Convention Centre
23-24 September 2015

The Thirteenth Annual Meeting of the LACF was hosted by the Inter-American Development Bank (IADB) and the Organization for Economic Cooperation & Development (OECD), together with the Fair Trading Commission (FTC) at the Montego Bay Convention Centre in Jamaica. The two-day event commenced on Wednesday, September 23, 2015; and as the host of the LACF, Mr. David Miller, Executive Director of the FTC welcomed participants to Jamaica and to the LACF, and introduced the officials who delivered opening remarks.

The officials were:

- ♦ Honourable Sharon Ffolkes Abrahams, Minister of State, Ministry of Industry, Investment and Commerce.
- ♦ Mr. Christopher Samuda, Chairman, Fair Trading Commission of Jamaica
- ♦ Mr. Juan Pedro Schmid, Country Economist of the IADB
- ♦ Mr. Frédéric Jenny, Chairman, OECD Competition Committee and Latin American Competition Forum.

This is the first occasion that an international conference on competition policy of this nature was hosted in the English-speaking Caribbean.



Participants of the 13th Annual Latin American Competition Forum



From left to right: Paul Dobson, Ania Thiemann, Javier Tapia, Michelle Brown, Ana Carolina Lopez de Carvalho and Brett Wendling

SESSIONS

There were four sessions over the two days of the LACF.

Session I – Wednesday, 23 September (Afternoon)

Topic: “Structural Issues in the Groceries Sector: Mergers and Regulatory Issues” chaired by Michelle Brown, Commissioner of the FTC

Presenters were:

- ♦ Ania Thiemann, Global Relations Manager, OECD Competition Division
- ♦ Paul Dobson, Professor of Business Strategy and Public Policy and Head of Norwich Business School
- ♦ Brett Wendling, Economist, Bureau of Economics, Federal Trade Commission, United States of America
- ♦ Ana Carolina Lopez de Carvalho, Senior Assistant for the President, CADE, Brazil and
- ♦ Javier Tapia, Judge, TDLC, Chile

The day ended with “*Jamaica Day Dinner*” hosted by the FTC at the Seawind Beach Club and Restaurant. Sixty-four persons attended the dinner.

Session II - Thursday, 24 September (Morning)

Topic: “Measuring Competition Advocacy’s Impact in Latin America & the Caribbean” chaired by Russell Damtoft, Associate Director, Office of International Affairs, Federal Trade Commission, United States of America.

Presenters were:

- ♦ Javia Nunez, Commissioner, COFECE, Mexico

- ♦ Mario Umana, Lead Trade and Competition Specialist, IADB Integration and Trade Sector
- ♦ Matea Silos Ribas, Head of Economic Analysis, Advocacy Department, CVM, Spain
- ♦ Vanessa Facuse, Head of the Litigation Division, FNE, Chile
- ♦ Silva Carrieri, Policy Analyst, OECD Competition Division

Session III – Thursday 24 September (Morning)

Topic: “Competition Issues in the Groceries Sector: Focus on Conduct” chaired by Dr. Peter-John Gordon, former Chairman of the FTC

Presenters were:

- ♦ Juan Delgado, Director Global Economics Group
- ♦ Taimoon Stewart, Associate Senior Fellow, University of the West Indies, Trinidad & Tobago
- ♦ Javia Nunez, Commissioner, COFECE, Mexico and
- ♦ Mateo Silo Ribas, Head of Economic Analysis, Advocacy Department, CMMC, Spain



Session IV – Thursday 24 September (Afternoon)

Evaluation & Future Work: General discussion chaired by Mr. Jenny

All countries and organizations were given the opportunity to share their views on the LACF, to share their ideas on topics and areas of discussion in the future, as well as ideas for improving the LACF.

The group thanked the FTC for hosting the event.



From left to right: Carlos A. Filartiga-Lacroix (Paraguay), Clarisa Araúz Quintero and Oscar García Cardoze (Panama)

Countries/Organizations	Number of Participants
Brazil	1
CARICOM	3
Chile	3
Colombia	1
Costa Rica	2
Dominican Republic	2
Ecuador	1
El Salvador	1
Guyana	2
Honduras	3
Jamaica	8
Mexico	2
Nicaragua	1
Panama	3
Paraguay	1
Peru	6
Portugal	2
Spain	3
Trinidad & Tobago	4
Uruguay	1
USA	2
Global Economics Group	1
IADB	1
Norwich Business School	1
OECD	3
UNCTAD	2
University of the West Indies	1
TOTAL from 27 countries/ organizations	61

Administration

Funding of the LACF was provided for the most part by the IADB, with the FTC having responsibility for several aspects including transportation for participants, the Jamaica Day Dinner as well as administrative expenses.

The FTC Planning Committee comprised Mr. David

Miller, Executive Director, Dr. Kevin Harriott, Competition Bureau Chief, Ms. Ann-Marie Grant, General Manager, Mrs. Kristina Barrett-Harrison and Mr. Paul Cooper, Research Officers, Ms. Deborah Wilson and Mrs. Latoya Wallace, Senior Secretaries and Ms. Jean Lally, Executive Secretary. The Committee was supported by Commissioners Dena Davis and Michelle Brown.

The OECD and the IADB oversaw the planning of the event through weekly meetings with Mrs. Ania Thiemann and Ms. Angelique Servin of the OECD and Mr. Mario Umana, Project Manager of the IADB.

The Planning Committee also facilitated the planning and hosting of the IBERO-American Forum and the Latin American Regional Centre Meeting which were also held at the Montego Bay Convention Centre on September 25, 2015.

On-site Office

To effectively execute administrative duties during the LACF the Committee set up an office at the Convention Centre in proximity to the room in which the LACF was held.

Here, the on-site Staff facilitated the needs of the LACF and participants.

Website

A website was created by the FTC specifically for the LACF. Located at www.lacf2015jamaica.com, it contained all documents and requisite information for participants. This included:

- ♦ Practical information such as visa requirements, venue and hotel information, transportation arrangements as well as general information about Jamaica’s weather and currency.
- ♦ Registration form
- ♦ Agenda
- ♦ Call for country contributions and background documentation
- ♦ PowerPoint presentations

A link to the LACF website was also created on FTC’s website.

Video & Audio Recording & Photography

Video and audio recording capabilities were in place for all sessions; which were produced in both English and Spanish through on-site interpreters.



Transportation

Jamaica Tours Limited transported participants each day between the host hotel, Half Moon Hotel and the Montego Bay Convention Centre.

Media & Public Relations

Information was disseminated directly to individuals on the distribution lists of FTC and MIIC as well as

published on FTC website and Facebook page.

In addition, press advisories on both the National Competition Day and the LACF websites were issued leading up to the events. Features were carried by the Latin American Herald Tribune, Jamaica Information Service, Go-Jamaica, Tradingcharts.com and the World News Network. Mr. Miller and Mr. Jenny were interviewed by EFE News Agency of Latin America.

National Competition Day Seminar

The National Competition Day Seminar which was hosted by the Jamaica Fair Trading Commission (FTC) was held on the morning of September 23, 2015. The theme for the Seminar was “Transforming Jamaica Digitally: From Flintstones to Jetsons” and it began with Mr. David Miller, Executive Director, greeting the persons in attendance. The Honourable Sharon Ffolkes Abrahams, Minister of State, in the Ministry of Industry Investment and Commerce (MIIC) gave the welcoming remarks, and this was followed by Honourable Julian Robinson, Minister of State in the Ministry of Science, Technology, Energy and Mining, who gave an overview of the views of his Ministry on the theme. Dr. Kusha Haraksingh, Chairman of the CARICOM Competition Commission (CCC) addressed the audience on the work of the CCC.

Panel Discussion

The discussion was moderated by Dr. Kevin Harriott, Competition Bureau Chief of the FTC. The panel comprised Mr. Kamau Chionesu of the Mona School of Business & Management, Mr. Charles Douglas of Flow, Mrs. Gail Moss-Solomon of Digicel Jamaica Limited, Mr. Maurice Charvis of the Office of Utilities Regulation as well as Mr. Russell Damtoft of the United



From Left to Right: Minister Robinson, Russell Damtoft, Maria de la Luz Domper, Tomas Suraez-Inclan Gonzales, Minister Ffolkes Abrahams, Charles Douglas and Maurice Charvis.

States Federal Trade Commission, Ms. Maria de la Luz Domper of the Chile Competition agency and Mr. Tomas Suraez-Inclan Gonzales of the Spanish Competition Authority. A spirited question and answer session which lasted about thirty minutes followed the panel discussion.

The Seminar had a recorded attendance of twenty (20) participants, not including persons registered for the LACF.

FTC Staff trained as trainers

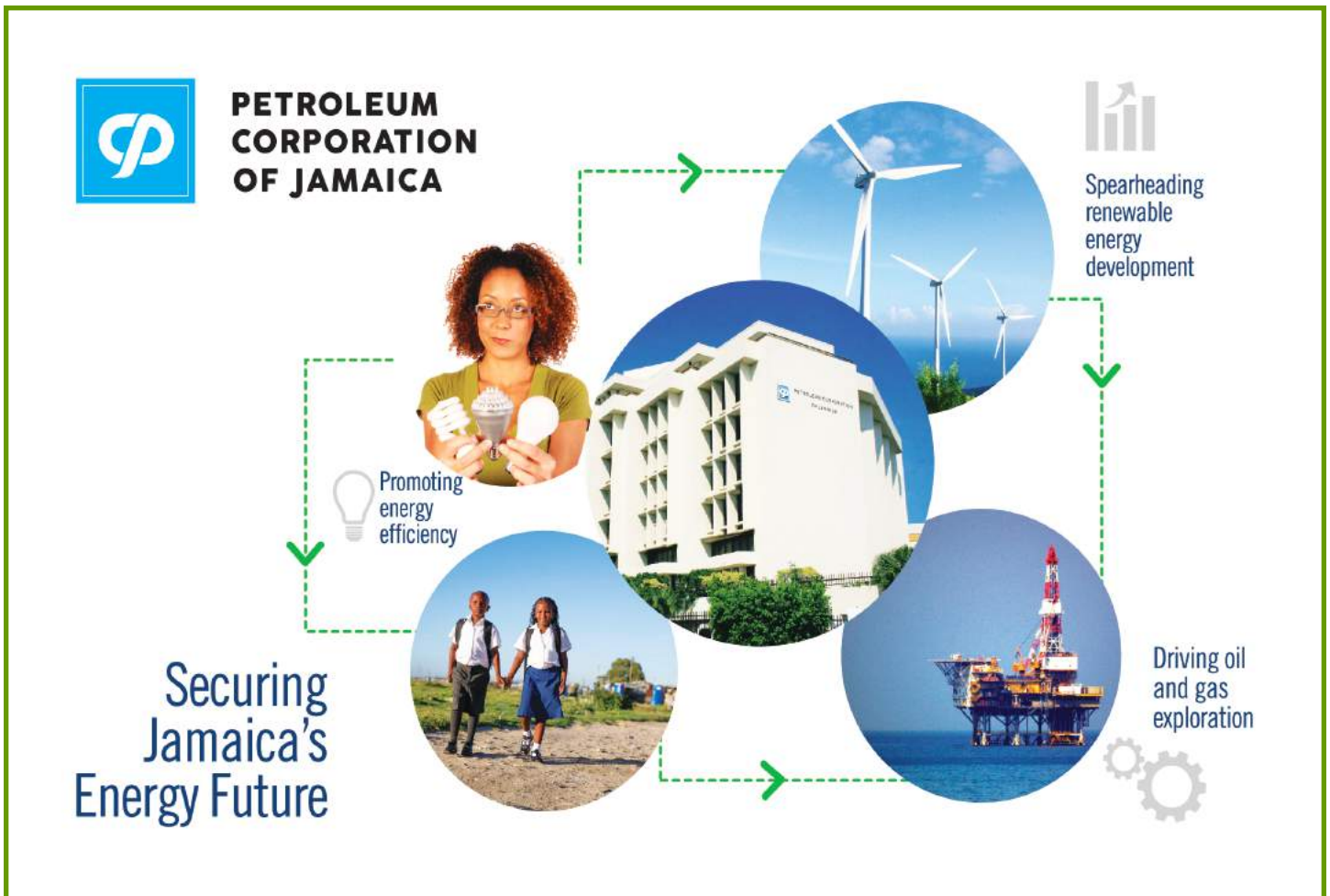
Four members of staff of the Jamaica Fair Trading Commission (FTC) participated in the CARIFORUM Training of Trainers Advanced Competition Law workshop, which was held on September 17-21, 2015. The participants from the FTC are Dr. Kevin Harriott, Competition Bureau Chief, Dr. Delroy Beckford, Senior Legal Counsel, Mr. Marc Jones, Legal Officer, and Mr. Desroy Reid, Competition Analyst. Other participants included representatives from the Dominican Republic competition authority, CARICOM Competition Commission, the Barbados Fair Trading Commission, CARIFORUM Directorate and CARIFORUM Secretariat. The workshop was conducted by Mr. Frederic Jenny, a judge at the Supreme Court in France, Professor of Economics at ESSEC Business School in Paris and Chairman of the OECD Competition Law and Policy Committee.

The objective is to upgrade the knowledge of the more

mature competition authorities in CARIFORUM in competition law enforcement, to improve their analytical skills as well as enable them to train and provide guidance to new competition authorities and policymakers in the region.

The training sessions covered the economics of competition law; anticompetitive agreements; abuse of dominance; competition and procurement; and mergers. Mr. Jenny emphasized the indispensable role that consumers play in ensuring that the competition process is unencumbered. Concepts such as market power, barriers to entry and consumer welfare were discussed.

At the conclusion of the workshop the participants were certified as competent and all persons have committed to carrying out training sessions for competition law practitioners in CARIFORUM.



Putting consumers first makes markets work: Is there adequate consumer protection in the CSME?

By Barry Headley - *Senior Economist, CARICOM Competition Commission*

A ROBUST consumer protection regime is important in the CARICOM Single Market and Economy (CSME) to create a more equitable relationship between individual consumers and the business community and to ensure the proper functioning of markets. It provides a useful mechanism to resolve claims of unfair trading practices by consumers against the business community in a cost effective and timely manner. Article 185(c) of the Revised Treaty of Chaguaramas requires that Member States enact harmonised legislation to provide, inter alia: *“for the prohibition of unfair trading practices, particularly such practices relating to misleading or deceptive or fraudulent conduct.”*

It is very important to acknowledge the collective harm that can be done to consumers by unfair trading practices which impact negatively on the proper functioning of markets, and the economies of Member States.

We are all consumers in our daily activities. A consumer is simply *“a person who purchases goods and services for personal use”* for example cellular phones, food and gasoline (goods) and voice calls, internet access, and electricity (services) from the business community.

The CARICOM Draft Model Consumer Protection Bill states that:

“consumer” –

- (a) means a person who-
 - (i) buys any goods under an agreement or transaction and includes any other user of the goods, when such use is made with the consent of the person who buys the goods; or
 - (ii) hires or avails himself of a services under an agreement or transaction and includes any other beneficiary of such services, when such services is availed of with the consent of the hirer;
- (b) does not include a person who-
 - (i) obtains a good for resale or for any commercial purpose; or
 - (ii) hires or avails himself of service under an agreement or transaction for any commercial purpose.

Practical experience has shown there is a lack of legislated redress mechanisms in a majority of CARICOM Member States which has traditionally imposed unnecessary financial losses on consumers. In addition to the Draft Model Consumer Protection Bill 2015 mentioned above, CARICOM has therefore recommended that Member States establish stand alone statutory consumer protection authorities to enforce any enacted national consumer protection law.

Consumer rights and consumer protection

Regionally, a common understanding of the basic tenets of consumer protection have been agreed and approved by Members States of CARICOM in Chapter Eight of the Revised Treaty of Chaguaramas (RTC). Articles 184-186 of the RTC place national and regional obligations on each

Member State and the Caribbean Community to implement and enforce certain basic rights for consumers. The basic rights for consumers contained in the provisions of Article 184-185 are consistent with the United Nations Guidelines for Consumer Protection (UNGCP) agreed by Member States of the United Nations in 1985. The UNGCP were subsequently revised in 1999 to take account of changing technological, social and economic developments.

The eight basic rights for consumers contained in the UNGCP and the RTC have been recognised by the global consumer movement inclusive of Consumers International¹ as:

- ♦ **The right to satisfaction of basic needs** - To have access to basic, essential goods and services: adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.
- ♦ **The right to safety** - To be protected against products, production processes and services that are hazardous to health or life.
- ♦ **The right to be informed** - To be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labelling.
- ♦ **The right to choose** - To be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.
- ♦ **The right to be heard** - To have consumer interests represented in the making and execution of government policy, and in the development of products and services.
- ♦ **The right to redress** - To receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services.
- ♦ **The right to consumer education** - To acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them.
- ♦ **The right to a healthy environment** - To live and work in an environment that is non-threatening to the well-being of present and future generations.

Given the economic, social and technological changes of the past two decades, a process is now underway to once again amend the UNGCP.

Responsibilities of the CARICOM Competition Commission and the Member States

At the Community level, the main role of the CARICOM Competition Commission (CCC) is that of a consumer advocate. This means that the CCC is responsible for monitoring and supporting the implementation of the framework for consumer protection in the Member States of CARICOM.

On the other hand, Pursuant to Articles 184 and 185 RTC, Member States of CARICOM are obligated to ensure that mechanisms are in place for consumers to seek and receive redress. The **“right to redress”** requires the creation of appropriate consumer laws as well as the establishment of institutions for enforcement, so that consumers can seek compensation for a loss incurred through the imposition of an unfair business practice. Compensation received can take the form of a refund of money spent, receipt of an item of similar value, or credit towards purchase of another item.

The RTC does not specify the manner or form by which Member States should fulfil their national obligations, thereby providing some flexibility in the local, legal and institutional arrangements used by Member States in meeting their national obligations. This is evident in the differences in the consumer protection regime practiced in Barbados, Guyana and Jamaica.

Given the current difficult economic environment in CARICOM, it is even more important that Member States create an effective consumer protection regime. As stated earlier, the CARICOM Secretariat has assisted in addressing the issue of limited and ineffective consumer protection by developing a Model Consumer Protection Bill. The Model Consumer Protection Bill provides a template for the Member States with regard to the critical areas in which consumers require protection, which serve to provide a minimum level of harmonization and protection in the laws on consumer protection in Member States of CARICOM.

Status of consumer protection regimes in Member States of CARICOM

Consumers in the majority of Member States of CARICOM continue to have limited or costly avenues to seek appropriate redress for losses incurred as a result of unfair trade practices. An

assessment of consumer protection legislations in CARICOM reveals that most laws were enacted during colonial times. They do not address issues such as e-commerce or internet-based sales from retailers such as Caribbean Airlines or Leeward Island Air Transport (LIAT), and do not provide an effective redress and enforcement process.

Benefits of consumer protection

A modernized consumer protection regime provides benefits to consumers by ensuring that redress for unfair trade practices can be accessed at minimal or no cost to consumers. It improves consumer welfare by providing a mechanism for monetary refund or receipt of a similar good or service of similar value. This creates a good consumer experience from their engagement in markets and the economy in general, and ensures value for money.

Consider a scenario where a consumer purchases a pair of shoes that are fit for purpose on Monday. The consumer uses the product as expected, however within a week the product shows significant defects or excessive wear and tear from the limited use. If there is no effective consumer protection regime in place to help that consumer seek redress from the retailer, then the business may not be penalised for selling shoes that were not fit for purpose. Modern consumer protection practice would require the consumer to engage with the retailer to seek satisfactory redress for the loss suffered. If there is no consumer protection law to require this first step, the consumer who purchased the shoes may only have recourse to the courts to claim damages. This is likely to be an impractical and economically unfeasible option for most individual consumers, and may only be pursued when the benefits clearly outweigh the cost. The same is also true for a business that wishes to seek redress from a consumer who sought to gain increased benefits through fraud or misrepresentation of facts.

Conclusion: Consumer protection impacts positively on consumers, markets and economic development

Modern consumer protection enforcement should not be viewed only in the context of individual consumer redress. It is also about ensuring that avenues for redress exist for businesses; that it is easily accessible; and provides the required deterrent effect. Consumers and businesses suffer in silence if there is no viable alternative for them to access


Table 1: Status of CARICOM countries without Statutory Consumer Protection Authorities

Country	National Consumer Authority	Legal Authority	Independent Regulator
Antigua and Barbuda	Consumer Affairs Department	<ul style="list-style-type: none"> ◆ Consumer Protection and Safety Act ◆ Sale of Goods Act ◆ Unfair Contract Terms Act ◆ Distribution and Price ◆ Misrepresentation Act ◆ Hire Purchase Act 	NO
Belize	Consumer Affairs Department	<ul style="list-style-type: none"> ◆ Supplies Control Act (Chapter 293) 	NO
Dominica	Consumer Affairs Department	<ul style="list-style-type: none"> ◆ Standards Act ◆ Hire Purchase Act ◆ Supplies Control Act 	NO
Grenada	Consumer Affairs Department	<ul style="list-style-type: none"> ◆ Price Control Act ◆ Standards Act ◆ Hire Purchase Act 	NO
Montserrat	Consumer Affairs Department	<ul style="list-style-type: none"> ◆ Milk Act (1949) ◆ Sale of Goods Act ◆ Distribution and Price of Goods Act 	NO
St. Lucia	Consumer Affairs Department	<ul style="list-style-type: none"> ◆ Distribution Price of Goods Act 12/2006 ◆ Hire Purchase legislation was amended - Consumer Credit Act (35/2006) ◆ Sale of Goods Act ◆ Standards Act 	NO
St. Kitts and Nevis	Consumer Affairs Department	<ul style="list-style-type: none"> ◆ Price and Distribution of Goods Act ◆ Sale of Goods Act ◆ Standards Act ◆ Weights and Measures Act 	NO
St. Vincent and the Grenadines	Consumer Affairs Department	<ul style="list-style-type: none"> ◆ Price and Distribution of Goods Act ◆ Sale of Goods Act ◆ Standards Act ◆ Weights and Measures Act 	NO
Suriname	Consumer Affairs Department	<ul style="list-style-type: none"> ◆ Decree E-47 Price Control law 	NO
Trinidad and Tobago	Consumer Affairs Department	<ul style="list-style-type: none"> ◆ Consumer Protection and safety Act 1985 amended 1999 	NO

Source: CARICOM Competition Commission and national consumer authorities in CARICOM

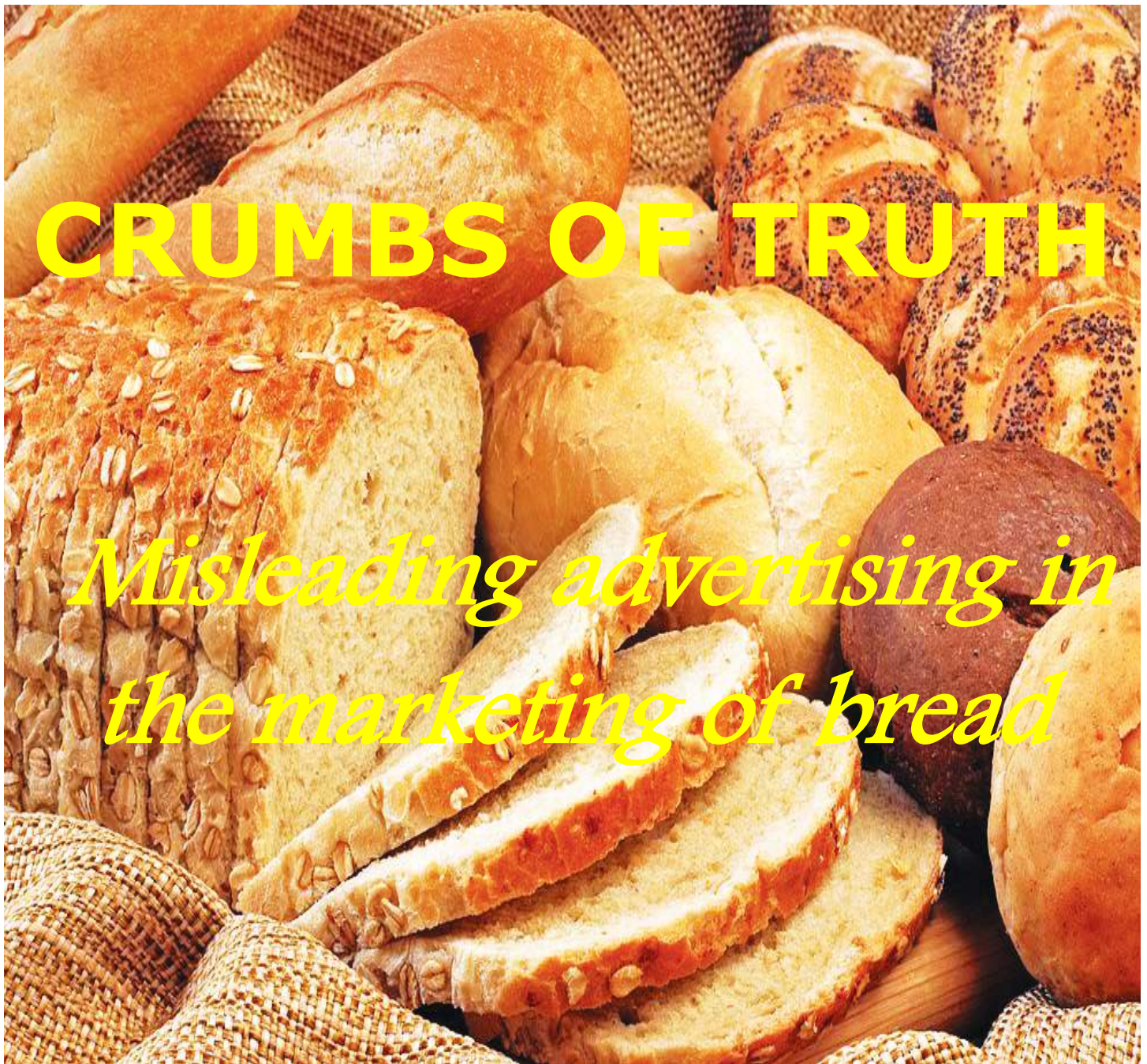
efficient and cost effective redress. An effective consumer protection regime promotes consumer confidence, innovation and competition among businesses, improves the efficiency of markets and encourages economic and social development. The CCC encourages consumers and the business community to visit its website, www.caricomcompetitioncommission.com to obtain information on the consumer protection laws and

national consumer organisations in their respective countries. The CCC also encourages consumers and businesses to visit their national consumer organisations websites on a regular basis.

Further information about the work of the CCC, can be accessed by contacting admin@ccc.sr with your questions or by utilizing the query facility on www.caricomcompetitioncommission.com 

Endnotes

¹ CI is an independent global campaigning voice for consumers established in 1960 with over 250 Member organisations in 120 countries., <http://www.consumersinternational.org/who-we-are/>



By Wendy M. Duncan & Marc S. Jones

Bread, the Universal Food

“Where there is no law, there is no bread.” These words by Benjamin Franklin, a Founding Father of the United States of America, capture the ubiquity of bread. Bread is called *“the Staff of Life”* because it is such a basic food that it supports life. Some form of bread has existed in every era throughout history or can be found as a food staple in almost every society today. From the ancient Egyptians of the 20th century B.C., the Republic of Rome and the bakers of Greece, to the accounts of the manna that fed the Israelites, bread in its varied forms, fed the people. Here in Jamaica, ‘Bammy’ – a type of

round flat bread made from grated cassava and inherited from the Taino Indians, the island’s first inhabitants - is a favourite served with fish. ‘Hard dough Bread’, another Jamaican favourite, first brought to Jamaica by the Chinese, is also very popular with most Jamaicans.

The Health Food Industry Grows

With growing concerns about the rise in the incidence of diabetes in the island, however, increasing numbers of Jamaicans have become health conscious. According to statistics from the Registrar General’s office and the Statistical Institute of Jamaica (2003),

diabetes is the second leading cause of death in the island. The Whole Wheat Bread Industry has grown as health becomes the main consideration in choice of baked products and consumers have become more discriminating in their choice of bread.

When competition is thriving in a market, the offshoot is that consumers benefit from better quality products, lower prices and a wider range of product choices. A crucial aspect of competition is that consumers should always be provided with accurate, sufficient and timely information to enable them to make the best and most effective choices when buying products or entering into business transactions. For this reason, it is important that consumers be provided with material information *before* entering into transactions so that they are adequately equipped to make correct purchasing decisions – either to buy, or to walk away and buy elsewhere. This is the ‘market muscle’ which the consumer flexes and which crowns him King in a competitive marketplace.

‘Whole Wheat’ Bread

Developments in the ‘Health Food’ industry – particularly relating to whole wheat bread and similar products – have prompted the Fair Trading Commission (FTC) to investigate, explore, and actively address some of the issues, problems, and risks that arise for consumers when there is inadequate, or misleading information regarding the components of foods such as ‘whole wheat bread’. One writer once quipped amusingly that “*Most brown bread is merely white bread with a fake tan*”¹. The reality, however, appeared far more serious when Jamaican consumers complained of the dangers that they were facing when bread, advertised as having ‘whole wheat’ as its major component, but being actually comprised of main ingredients such as other types of flour considered to be less healthy – for example, ‘baking flour’, enriched flour’, and other forms of ‘white flour’ – was being sold in supermarkets and other retail outlets. ‘White’ flour is made from stripping the wheat and bleaching it to remove the milled yellow colour. The regular use of white flour products has been linked to an increased risk of developing diabetes. Sometime around the Second World War when this ‘whiter’, bleached flour was introduced to the market, the United States (among other countries) became aware that the processing of wheat flour eliminated all of the vitamins and minerals from the flour. As a public health measure, it was required that the missing vitamins and minerals be replaced – this is how ‘enriched white flour’ entered the bread scene.

Misleading Advertising – the Jamaican Experience

In 2008, the FTC became aware that a number of bakeries in Jamaica had been misleadingly labeling their bread and similar products as ‘whole wheat’ despite having the ‘unhealthier’ white-flour main ingredients mentioned. Looming large was the grave health risk exposure to some members of the public, such as diabetics, who might have assumed that the labeling was accurate. ‘Whole Wheat’ was prominently displayed on the labels; however, the fine print on the packages revealed the inconsistency. The FTC took quick action by issuing Press advisories to the public in the print, radio and television media. The Commission also issued a directive to the Bakers’ Association of Jamaica to take corrective action, and liaised with the Bureau of Standards Jamaica.

The outcome of the investigation was that the bakeries changed the labeling by using ‘crack and peel’ labels - a type of temporary label applied by an adhesive - to show correct information on then existing packaging (i.e. those already at retail outlets) and put measures in place to ensure that accurate labeling was applied to future packaging. A series of subsequent packaging checks in various supermarkets indicated that the majority of the bakers had become compliant. The Association made a commitment to bring about compliance in the event that any were found to be non-compliant. Most significant, however, is the fact that the public education efforts and the resulting increased level of awareness, together with the FTC’s work with the Bakers’ Association and discussions with the Bureau of Standards, resulted in bringing about a change in the industry. Consumer awareness and ‘buyer power’ mattered.

The Fair Competition Act (FCA), among its consumer provisions, speaks to Misleading Representations in section 37. The offence takes place when an enterprise in pursuit of trade, promoting goods or services, or any business interest, makes a material representation to the public that is false, misleading, or likely to be misleading. Representations may be express, implied, or by omission and may be made by any form of communication (*‘any means’*) including written, oral, electronic and graphical representations. Such representations are construed as advertisements. Materiality is measured by the extent to which information provided or omitted affects the consumer’s decision to purchase. In other words, how much would the information affect the consumer’s ability to make an informed decision regarding his/her purchase? The offence attracts a penalty of up to \$1 million for

individuals and up to \$5 million for enterprises which breach the law. The offence is one of strict liability; which means that, with respect to liability, intention or honesty in the belief of the accuracy of the information is irrelevant.

Other Jurisdictions

Further afield in jurisdictions such as the United States and Australia, other competition authorities have also had cases of misleading advertising in the marketing of bread. Indeed there was the "*Great Wonder Bread Case*" between the U.S. Federal Trade Commission (U.S. FTC), and ITT Continental Baking Company - the makers of the Wonder Bread brand.

ITT Continental ran a series of television commercials in 1971 which portrayed the responses of several children to the question "How big do you want to be?" - e.g. "Big enough to ride a two-wheeler" - and suggested that the viewer could help by "serving nutritious Wonder Bread." The commercials contained a "fantasy growth sequence" in which a small child was depicted as growing to the size of a 12 year old in a few seconds.

The U.S. FTC alleged that the commercials represented to consumers that Wonder Bread was an extraordinary food for producing dramatic growth in children. However in truth Wonder Bread was enriched bread, which would not provide a child with all the essential nutrients for healthy growth and development. ITT Continental denied that the commercials contained or made any such representation as alleged.

The U.S. FTC ultimately concluded that the representation was made in the commercials, and that it was false and misleading. There were several appeals, with the United States Court of Appeals, Second Circuit, finally upholding the FTC's view on the basis that the commercials contained numerous "pictorial and verbal suggestions of an important causal relationship between the consumption of Wonder Bread and growth in children."²

More recently in 2014, the Australian Competition and Consumer Commission (ACCC) secured a judgement in its favour against a large supermarket chain for misleading conduct in the promotion of its store brand bread.³ Coles Supermarkets Australia Pty Ltd had a large chain of approximately 726 supermarkets throughout Australia; 637 of which had in-store baking areas where bread and other baked goods were offered for sale.

In advertising its bread via store front signage and

product packaging, Coles employed several marketing phrases such as "Baked Fresh", "Freshly Baked In-Store" and "Baked today, sold today." The gist of these marketing claims was that the bread was either baked from scratch or entirely baked at the in-store baking areas on the day they were offered for sale. Yet, on the contrary, the bread offered was produced through a process whereby frozen par-baked dough from suppliers was transported over the course of weeks to the in-store baking areas where it was baked again for a shorter period of time before being offered for sale.

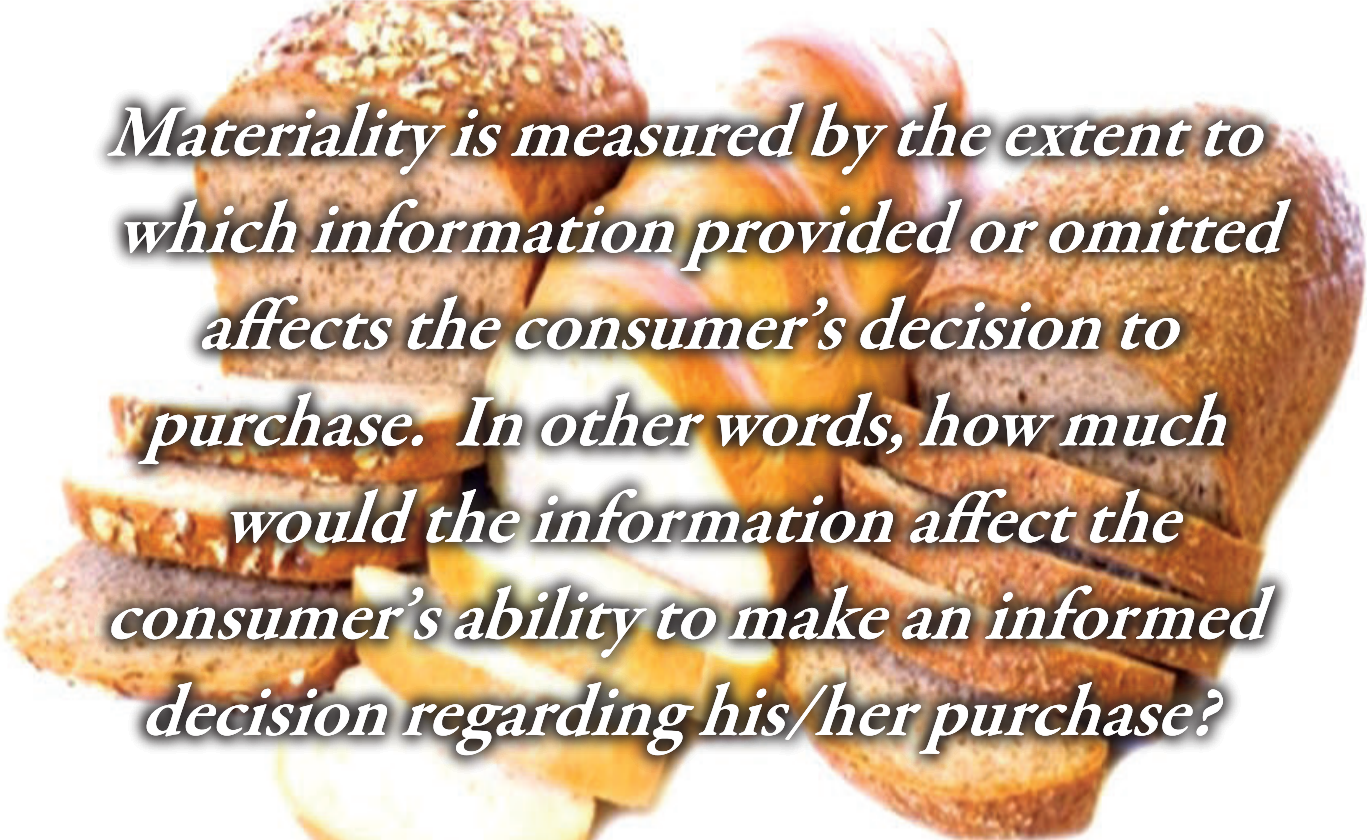
The ACCC filed suit under a number of provisions of the Australian Consumer Law. The ACCC's case was *not* that the par-baked bread was inferior in quality to bread made from scratch; rather it was that consumers would be misled into purchasing from Coles thereby enabling the supermarket chain to generate sales that it otherwise may not have done but for the misleading conduct. Coles disputed that contention by asserting that baking, in so far as it was defined as the application of heat in an oven for some period of time, did in fact occur in-store.

The case ultimately turned on the Court's view of how the ordinary, reasonable consumer would understand the word "bake". Would it be understood from a household perspective as involving the preparation of the dough, as contended by the ACCC? Or would it be understood from a commercial perspective as involving only the heating or cooking process, as contended by Coles? The Court took the former view, holding that: "to use the words 'freshly baked', and especially 'baked fresh'...connotes that there has been baking of fresh dough."⁴ In this regard the Court noted that the manner in which Coles' baking operations were executed, from the store front signage to the layout of the in-store baking area with ovens that were visible to purchasers, communicated that fresh baking was done on the premises.

New Standards – Good Bread or Bad?

Returning to the Jamaican context, the formulation of standards by the Bureau of Standards, will assist the FTC in proving cases of Misleading Representation regarding the composition of whole wheat bread and similar products as these standards will help define in a precise manner what is meant by terms such as 'whole wheat' or 'whole wheat bread' so that ingredients falling short of these standards will serve as proof of a breach.

The Bureau of Standards has not yet finalized its standards, but the most recent draft indicates that whole wheat must be labeled '100% whole wheat bread'.



Materiality is measured by the extent to which information provided or omitted affects the consumer's decision to purchase. In other words, how much would the information affect the consumer's ability to make an informed decision regarding his/her purchase?

Conversely, products made with less than 100% whole wheat flour must be labeled according to the percentage of whole wheat used. Products made from wheat bran must also be labeled according to the percentage used. Finally, where bread is coloured with molasses and/or caramel, this fact must be specifically shown on the label.

It has been said⁵ that “*Good bread is the most satisfying of all foods, and good bread...the greatest of feasts...*”.

The major concern for consumers which emerges from the Jamaican experience and that of other jurisdictions is the standard by which we define ‘good’ bread. Whether it is defined primarily according to health considerations, or other factors such as taste, ‘freshness’ and the process of preparation, the key safeguard is that consumers be provided with accurate information; then the consumer will be empowered to choose or refuse. 👑

Wendy M. Duncan and Marc S. Jones are Attorneys-at-Law who currently serve as Legal Officers at the Fair Trading Commission.

Endnotes

¹ Joel Fuhrman, ‘Eat to Live: the Revolutionary Formula for Fast and Sustained Weight Loss’

² *ITT Continental Baking Company v Federal Trade Commission* 532 F. 2d 207 (1976).

³ *Australia Competition and Consumer Commission v Coles Supermarkets Australia Pty Limited* [2014] FCA 634.

⁴ *ibid*, para 149.

⁵ James Beard, American Cookbook author, teacher, columnist and television personality, 1903 – 1985.

Content explosion crowns the consumer King



By Corel Green & Jodi-Ann Jackson*

Introduction

In the US, media executives have been struggling with what have been termed "cord-shaving" and "cord-cutting". Consumers now have many options for accessing content. In a 2014 article from the Wall Street Journal¹, it was reported that several of them (cord-cutters) have completely disconnected their pay-tv packages and have opted for more affordable Over-the-Top (OTT) providers such as Netflix and Hulu. Others (cord-shavers) have downsized their pay-tv packages to basic packages which exclude many of the popular channels. According to Bryan Rader, CEO of Bandwidth Consulting LLC, a firm providing specialised consulting for the pay-tv industry, "We're at a tipping point of consumers thinking Internet first and TV second."

The Decline of Cable and Rise of OTTs

The Wall Street Journal article continues by highlighting that during the past four years, the top 40 most distributed [cable] channels for 2010 - such as CNN and USA- have lost approximately 3.2 million subscribers, that is, more than 3% of their distribution. Consequently, estimates have indicated that US local broadcast stations now constitute 12% of pay-tv subscriptions when compared to their previous 8% to

10%. Consumers are moving away from premium cable offerings.

Conversely, OTTs have begun to thrive. In 2013, Netflix reported an annual revenue of US\$4.37 billion, that is, a 28,978% increase in its 2002 revenue figure of US\$150,800². Between April and June 2015 Netflix added 3.3 million subscribers, with more than 70% of this growth attributed to international subscribers. The OTT provider's subscription base now stands at 65.6 million.

Jamaican pay-tv operators are also feeling the effects of cord-cutting and cord-shaving. In 2014, there was a 5% reduction in the number of reported cable subscribers³. This compares starkly to a 10% increase in 2013 and a 14% increase in 2012.

Anecdotal evidence suggests that many Jamaicans are opting for OTT services. One contributing factor seems to be the power that consumers derive from on-demand programming. For example, it is more convenient for consumers to select on-demand options which suit their lifestyles and can make content available on any device or screen. Also, with increased broadband access, personalised content becomes more easily accessible online.

TV Fights Back

How then can TV operators survive and thrive in what appears to be a contracting sector? One option gaining traction in the US market is the Video-on-Demand (VoD) service. VoD allows the traditional pay-tv consumer to access content at their convenience. This service has recently been introduced in Jamaica.

Additionally, cable operators such as Time Warner and Comcast are now making significant investments to deliver their own OTT-type services⁴. They are able to capitalise on their access to a wide variety of content, existing customer base and ability to bundle OTT services with traditional offerings, in a bid to remain competitive.

Free-to-Air television stations are also reacting. In August 2014 the RJR Group announced that it would be launching a linear-type OTT service⁵.

In a 2014 article⁶, Endeavour Partners, a strategy consulting firm specialising in mobile and digital business, suggested that another option available to cable operators is unbundling. They proposed a structure in which channels and programme slots are paid for on a per-use basis, similar to Amazon Video, replacing the traditional pre-set packages. Advertisers would benefit by a better understanding of target consumers based on their clearly identifiable and distinct preferences.

Regulatory Treatment of OTTs

As innovation drives the content market and throws up new services and means of access, the question arises whether the Broadcasting Commission should regulate cable-like or broadcast-like services over the Internet. In response, the Broadcasting Commission has recommended to Government that there should be a service-based rather than platform-centric definition of broadcasting which captures the activity of all "like" services. It is recognised that owing to the ubiquitous nature of ICTs, the domestic consumption of some programming services from foreign programming service distributors (which do not have a commercial

presence in Jamaica), will not enjoy the regulatory and legal protection nor bear the regulatory and legal burden of the local regulatory regime.

It also does not follow that the existing regulations would be applied in the same manner, or at all, to new services. So, for example, in August 2015⁷, Mexico's Federal Telecommunications Institute ruled that OTTs ought not to be regulated using the pay-tv model. In the U.S., the Federal Communications Commission⁸ (FCC) has considered whether to apply pay-tv regulations to online video distribution providers. The FCC's policy posture is that consideration should be given to extending pay-tv-like regulation to providers who offer linear programming or cable-like services. For the moment, those who provide a variety of non-linear content⁹ such as Netflix and Hulu, will be excluded from such regulation.

Conclusion

This discussion highlights the need for a robust, yet flexible regulatory framework if regulators such as the Broadcasting Commission are not to lag behind or be an obstacle to innovation. Such a framework should seek to minimise the occurrence of arbitrage in the regulation of services across platforms but without treating such services as homogenous.

Above all, those who create, distribute and regulate content must adopt approaches that respond to consumer migration to multiple digital platforms and their demand for seamless access to diverse content across platforms. 🏰

*ABOUT THE AUTHORS

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Their views are personal and do not necessarily reflect the position of the Broadcasting Commission.

Endnotes

¹ <http://www.wsj.com/articles/pay-tvs-new-worry-shaving-the-cord-1412899121>

² <http://www.statista.com/topics/842/netflix/>

³ <http://www.statista.com/chart/3153/netflix-subscribers/>

⁴ <http://www.quickplay.com/cable-exes-say-cord-cutting-due-to-ott-is-insignificant-but-ott-is-an-opportunity/>

⁵ http://www.jamaicaobserver.com/business/RJR-goes-live-streaming--video-on-demand-by-Oct_16417156

⁶ <http://endeavourpartners.net/cable-companies-imitate-ott-services/>

⁷ <http://www.telecompaper.com/news/mexican-regulator-says-ott-providers-not-under-pay-tv-law--1096799>

⁸ <http://variety.com/2014/tv/news/fcc-considers-extending-broader-pay-tv-rules-to-ott-providers-1201383662/>

⁹ Non-linear programming refers to advanced, non-traditional ways of presenting television programming. Many consider video on demand and other forms of interactive TV nonlinear. http://www.itvdictionary.com/definitions/nonlinear_tv_definition.html

Consumer Abuse Stops Here!!

NATIONAL CONSUMER RIGHTS AWARENESS CAMPAIGN

By Michael Diamond - Vice President, National Consumer League of Jamaica

MY people are destroyed for the want of knowledge", has broader meanings than its religious precepts. Consumers are powerless due to the lack of information, which is either poorly communicated or simply too scattered. In this IT age technology does not always compliment the lifestyles of the individual consumer thus making it all the more challenging in navigating the perils from NOT knowing your rights as a consumer. This creates tremendous opportunities for consumer abuse by merchants and vendors alike, especially those being greedy and unscrupulous.

As the sole Non-Government Organisation (NGO) consumer advocacy entity in Jamaica, the National Consumers League of Jamaica (NCL) is called upon daily to be the unbiased voice of every consumer in the island, regardless of socio-economic, financial or political affiliations. Having an independent body that champions for our rights as consumers has proven far better than relying on gerrymandering. Over the years a strong focus was placed on "Balancing Your Budget" as consumers needed to develop better money management attitudes towards their finances. Salaries and disposable incomes have not kept pace with the higher costs of living therefore a new strategy was needed: C.A.S.H.

It is the general consensus that We all need C.A.S.H to stop the rampant abuses against consumers. The National Consumer Rights Awareness Campaign (NCRAC), being launched for 2016, is targeting the 14 Parishes of Jamaica. Educating consumers about

the Eight (8) Basic Rights of the consumer and the role of every consumer in advancing the quality of products and services, reminding all that *the consumer is king!!*



Consumerism is an important part of Vision 2030 and the driving force behind any sustainable building of a nation. The Mission of the NCRAC is to engage consumers from talk to action; from complacency to compliant merchants and service providers; enabling the full purchasing power of the consumer through the Guaranteed Standards and sector accountability to preventing and reducing consumer rights violations.

The National Consumers League of Jamaica is very

proactive in the execution of our mandates, as the informal approaches have proven most effective when communicating valuable information regarding consumers rights. These settings include community centers, local church youth programs, companies and schools. Taking the message to the people rather than waiting for something to happen first. The campaign is directed towards the business communities as well; many business operators are under-informed in matters of consumers rights. The printed materials are distributed with a brief discussion that garners the listener's interests which leads to an intense yet specific exchange of information. A welcoming tradeoff from the NCRAC, is greater consumer awareness on both sides which tends to encourage better Customer Service across all sectors...C.A.S.H

The NCL's print and media materials are thought provoking, informative and instructive, focusing on the main concerns of consumers. The following concerns are highlighted based on consumer complaints and engagements:

- ♦ **Store warranty versus Manufacturer warranty;**
- ♦ **No Refund Exchanges Only Policies;**
- ♦ **Consumers Rights enforcement under the Consumer Protection Act, *et al***

These unaddressed practices and concerns have done much to erode consumer confidence in Jamaica and have fostered a "*take it-or leave-it*" attitude towards consumers from businesses and merchants alike. Misinformation and complacency have left consumers on the horns of a dilemma. Either forego the purchase in defense of consumer rights or simply go with the flow accepting the violation and hope for better. Hence the overwhelming need for the National Consumer Rights Awareness Campaign. The Public and Private Sectors are routinely engaged for input, guidance and intellectual support for sustainable progress at improving consumerism. Protecting the national interests of Jamaica's consumers is our highest priority as we do our part in achieving Vision 2030.

PETROL CONSERVATION TIPS FOR MOTORISTS

1. Service and maintenance:

- ♦ Clean air filter regularly - every six months to a year.
- ♦ Clean fuel system annually (aided by using after market injector cleaners approximately every 3000km).
- ♦ Ensure proper tyre inflation to reduce drag.

Advantages of Correct Tyre Inflation - Maintaining correct tyre inflation pressure helps optimize tyre performance and fuel economy. Correct tyre inflation pressure allows drivers to experience tire comfort, durability and performance designed to match the needs of their vehicles. Tyre deflection (the tread and sidewall flexing where the tread comes into contact with the road) will remain as originally designed and excessive sidewall flexing and tread squirm will be avoided. Heat build-up will be managed and rolling resistance will be appropriate. Proper tyre inflation pressure also stabilizes the tyre's structure, blending the tyre's responsiveness, traction and handling.

- ♦ Change spark plugs at recommended period.
Fouled, damaged, or worn out spark plugs can lead to a variety of engine problems, such as misfires, hard starts, increased emissions, and poor fuel economy. For most vehicles, you should replace your spark plugs every 30,000 miles (consult your owner's manual for your specific interval).

2. Fueling:

- ♦ Fill tank (as opposed to getting just a certain amount each time)
- ♦ Do not overfill gas tanks; filling up to the neck prevents the tank from venting
- ♦ Use the correct grade of fuel, that is, manufacturers' recommended grade

3. Driving Habits:

- ♦ Maintain cruising speed
Maintaining an efficient speed is an important factor in fuel efficiency. Optimal efficiency can be expected while cruising at a steady speed, at minimal throttle and with the transmission in the highest gear. The optimum speed varies with the type of vehicle, although it is usually reported to be between 35 mph (56 km/h) to 50 mph (80 km/h).
- ♦ Avoid quick and sudden acceleration
- ♦ Plan route ahead of time taking low traffic options when possible
- ♦ Carpool when possible



Consumer demand: *the driving force of the motor vehicle insurance industry*

By Verlis Morris

Introduction

The future is uncertain therefore risks are inherent. Risks can result in large losses which can deplete the resources of a person. It is this underlying concern that drives the demand for insurance in general but for motor vehicle insurance, the demand is also likely to stem from the legal requirement for motorists to be insured. In 2013, the Fair Trading Commission undertook a study of the motor vehicle insurance industry to assess the level of competition in this market amidst consumers' general opinion that they are being short-changed by insurers. One of the roles of competition agencies is to promote competitive markets since economic theories and documented actual experience of some economies have shown that a competitive market yields the best results for consumers. Competitive markets are characterized by

suppliers who have the opportunity and incentives to offer consumers more affordable goods and services, in a wider variety and/or higher quality.

Background

An insurance policy is an agreement in which one party (the policyholder) makes periodic payments ('premiums') to another party ('insurer') who agrees to pay the policyholder a defined sum ('benefit') in the event of a specific loss.¹ Specifically, motor vehicle insurance is insurance purchased for cars, trucks, motorcycles and any other motorized road vehicles. This prevents the policyholder from bearing the total costs of losses arising from damages and/or bodily injuries resulting from traffic collisions, theft of the vehicle or other damage caused to the vehicle. Instead, the insurance company offset a significant portion of costs arising from these situations.

In Jamaica, there are eight general insurers from which consumers can choose motor vehicle insurance; however, most offer limited products and services. For example, all insurers provide insurance for private and commercial use of motor vehicles but not all offer insurance for public passenger transportation, the elderly and motorcycles. Therefore, for some categories, the market is competitive while for others there are limited players and in the worst case scenario, one provider.

Aside from the general insurers, there are other players in this industry that add value for consumers. These are the brokers, agents and sales representatives who also offer insurance policies. These policies, however, still has to be underwritten by one of the eight general insurers. That is, these players act as retailers in the market where they obtain their supplies from general insurers, the wholesalers. The rest of the article demonstrates that consumers yield some benefits typical of a competitive market and the consequent influence their demand has on participants and stakeholders within the industry.

Prices

In 2013, the average motor vehicle premium ranged between \$20,000 and \$73,000 per annum. This represents over 200% difference in price when compared to the lower end of the range.

The disparity in premium could be a result of the varying mix of products and services offered by each insurer. Stakeholders confirmed that the disparity stems from the risk profiles of their customers and the size of their customer base. For example, public passenger vehicles and young drivers are considered high risk policy holders. Thus, an insurer that offers coverage to a higher proportion of these customers would have a riskier profile and consequently charge higher premiums relative to a like sized insurer but with a less risky profile. Likewise, for the same level of risk, an insurer with a larger customer base can charge lower premiums. The data we collected supports this view; insurers with a larger share of the market have lower average premiums while insurers with similar customer base shows difference in premiums as their risk levels would have indicated.

It is difficult to conclude that consumers are unable to shop around and/or have difficulties switching insurers since brokers provide this service which is used by most consumers.² Brokers fulfil consumers' need to shop around and select the best products. Brokers are incentivised to be neutral since it is more beneficial to

offer the best policy for their clients instead of being biased towards any particular insurer.³ Additionally, the broker will switch the client's insurer on expiration of a policy if a better policy becomes available in the market with or without the client's knowledge. The most significant deterrence in switching insurance is the delay in transferring no-claim discount to the new insurer and that the new insurer no-claim discount may be lower than the previous insurer.

Choices

Firms also compete by making their products different from their rivals. In doing so, they inadvertently widen the choices for consumers delivering products and services that mirrors more consumers' tastes and preferences. Since independent stakeholders claim that premiums are a reflection of insurer's risk profile then a spread in the average premium is likely a signal that each insurer is offering coverage for different categories of consumers. Targeting different categories of drivers (and consequently assuming different risk) is one of the ways insurers differentiate their offerings from their rivals. One insurer may provide coverage for most public passenger drivers including taxi operators but other insurers provide coverage to only those who operate in the leisure and tour industry. Other examples of product differentiation include an insurer's recent strategy of offering new coverage to drivers above the age of 60 and another insurer is the only one offering coverage to petroleum haulage contractors.

Higher Quality Products/Services

We note that the industry has become more robust and less susceptible to financial shocks. Firms were better equipped to deal with the global financial depression in 2008 than the financial meltdown of the late 1990's. With this increased rigidity customers are more likely to recover claims. This stems from tighter regulations which were driven by a need to protect consumers. One of the most significant changes in regulation is the higher capital adequacy that firms have to meet to reduce their vulnerability to increased claim payouts from disasters. The observable reaction from firms was a series of mergers and acquisitions that is likely to improve exposure to risks through a larger customer base and to meet the higher capital requirement.

Innovations

In a competitive environment, firms have adequate incentives and opportunities to innovate. Innovation refers to creating more effective processes, products and services. Over the years, insurers have been changing their behaviour as a way to remain profitable.

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The King's choice of groceries: Store brands or branded products?

By Desroy Reid

Still reeling from the recent global economic crisis, Jamaicans have had to cope with the reality of using less to do more. Consumers in particular have been forced to rethink how they allocate their diminished income across a variety of goods and services. Recently, the Staff of the Fair Trading Commission (FTC) assessed the groceries sector with particular focus on the use of store-branded goods.

Consumers have become hyperconscious of the intrinsic value of grocery items and are stretching each dollar as far as it can possibly go. Grocery stores (i.e., supermarkets, corner shops and other retailers) have realized this and, now more than ever, are engaged in strategies designed to offer consumers more affordable groceries in an attempt to remain viable. One strategy that has reemerged in Jamaica is that of the introduction of store-branded goods. Store branded products are typically more affordable than their branded product counterpart and are available only at a given retail outlet as opposed to branded products which are available island-wide.

The introduction of store brands is informed by a long-standing economic principle which suggests that, all other things held constant, as store brands are introduced at grocery stores, consumers are likely to substitute away from the higher-priced branded products to the lower-priced store brands. The risk to grocery stores which introduce cheaper store brands, however, is that some consumers believe that there is a positive relationship between the price and the quality of the product. In particular, some consumers believe that the higher priced brands products are of superior quality compared to the lower priced store brands and therefore may not readily switch to the more affordable store brands.

To ease the suspicions of some consumers, grocery stores have sought ways to improve the quality of their store products either through partnering with merchandisers for production, labeling, etc., or

outsourcing to a producer which does not own a branded product. A grocery store representative commented that...

The major difference between our brands and the national brands is price. We provide an inexpensive alternative to the national brand. In terms of quality, both brands are comparable. In fact, for a number of the products both brands are manufactured and packaged by the same source. So we do not compromise on quality – we stand by the quality of our products. The only differences in this regard may be the formulation of the product.

It is unclear, however, whether these strategies have been effective in changing consumers' perception of the relative quality of branded and store branded products as the use of store brands is limited to only a few items; typically, only products with high sales volume are targeted by store brands.

The results of the survey indicate that grocery stores are highly motivated to secure lower prices for final consumers. The introduction of store brands offers evidence that grocery stores have alternatives to branded products and are willing to employ them where necessary for the benefit of consumers. In this regard, therefore, consumers' "kingly" powers have resulted in grocery stores exercising bargaining power on behalf of final consumers. In fact, grocery stores often secure more attractive prices from the merchandisers, which they pass on to final consumers.

Conclusion

The economic environment has forced consumers to reassert this power in their capacity as drivers of the economy. Consumers have the power to demand better prices, quality and service from grocery stores and merchandisers. Grocery stores have typically acquiesced to consumer demands. In addition, the study has shown that there have been significant improvements in the quality of service offered by grocery stores as well as their facilities such as extended

parking lots, drive-through windows and improvements to the general aesthetics of the locations.

Conversely, the power of merchandisers has waned. The study shows that the increase in the number of merchandisers as well as the partnering of grocery stores among themselves to purchase some items in bulk, has seen a shift in power from merchandisers to

grocery stores. This buyer power has allowed grocery stores to negotiate a cheaper purchase price which allows them to offer a lower price to consumers. This study suggests that that the grocery sector is competitive and that a consumer's welfare is well served. 🏰

Desroy Reid serves as a Competition Analyst at the Fair Trading Commission.

Consumer demand: the driving force of the motor vehicle insurance industry

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For instance, firms try to offer new products like road side assistance, online services, accident forgiveness and free windscreen replacement.

The insurance industry is susceptible to fraudulent claims which in turn results in higher premiums to consumers and possibly a collapse of the industry. Consumers have complained that they have to wait over long periods for claim payments; however, insurers have countered that they have to be satisfied claims are not fraudulent before payouts are made. Stakeholders have informed us that they are taking steps to reduce the waiting time for claim payouts. The Insurance Agency of Jamaica (IAJ), an independent body, is currently working on a database in collaboration with other relevant agencies that will provide useful information on policyholders so as to reduce insurers' exposure to fraudulent behaviour. The information will be made accessible to all insurers.

Consumers are also being made better off with the creation of the Central Information Bank. All insurers submit their customers' driving history to the bank which makes this information available to all insurers. This improves the ease by which no-claim discounts can be transferred from one insurer to another.

We note that almost all insurers form part of subsidiary groups. This is likely an effort by insurers to become more efficient with the benefits being passed on to consumers. We have seen consumers benefitting from discounted bundled products from the various

institutions within a particular group. For example, having a mortgage with a mortgagor within the group allows the customer to benefit from discounted premium if they take motor vehicle coverage from an insurer within that group. Insurers also form partnerships with other financial institutions to offer discounted premiums to their members. Insurers are also offering products they previously did not offer. For instance, the elderly is a category of consumers that is normally underserved because of its associated risks. Now, we have seen a particular insurer aggressively pursuing customers falling into this category.

Conclusion

From our study, we see that the intensity of competition differs across the different categories of customers. Private and commercial drivers are the groups most targeted and are likely to benefit the most from competition relative to other groups. Additionally, in a bid to compete firms offer differentiated products and thus categories of drivers that had difficulty purchasing insurance in the past are now able to obtain coverage. The changes in insurer's behaviour over time are likely a result of trying to satisfy consumers need. Thus consumers are influencing insurers' behaviour to some extent and benefitting from lower prices, wider variety and a greater pace of product innovation. 🏰

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Endnotes

¹Anderson, Judy Feldman and Robert L. Brown; (2005) "*Risk and Insurance*"; Education and Examination Committee of the Society of Actuaries.

²Interviewees claim that most policy holders use brokers to acquire insurance.

³Several stakeholders (which includes an insurer, a broker and IAJ personnel) interviewed commented that insurers' margins are low and the returns from gaining additional consumers by offering brokers rebates is infeasible.

FTC Statistics

Number of complaints received by the FTC
during the period April 1, 2013 - September 30, 2015

PRODUCTS AND SERVICES	Financial Year 2013/2014	Financial Year 2014/2015	April-September 2015
Automobile	77	25	9
Business Practices	2	-	-
Clothing/Accessories & Textiles	6	1	1
Computer	7	1	1
Construction/Home Repair Supplies	3	-	-
Education	7	11	5
Energy	3	2	-
Financial Services	12	7	3
Food/Supplements & Beverages	8	4	3
Funeral Supplies	-	1	-
Gaming & Contest	2	1	-
Gardening Supplies/Equipment & Horticultural Products	-	-	-
Government Services	1	1	-
Household Appliances & Accessories	15	6	1
Household Furnishings	4	1	-
Insurance ¹	-	5	1
Leisure & Recreation	1	1	1
Medical Supplies, Services & Devices	1	2	1
Office Furnishings/Equipment & Supplies	1	-	-
Personal Care	1	-	-
Petroleum Products & Accessories	4	2	-
Professional & Specialist Services	12	8	1
Real Estate	2	-	-
Telecommunications	66	29	7
Tourism	-	-	1
Transportation Systems	5	1	1
Utilities	3	1	2
Other ²	9	7	1
TOTAL	252	117	39

¹**Insurance** - Motor Vehicle, Health, Life and Peril

²**Other** - Baking, Payment Services, Legal Services, Agricultural Products & Agro-Processing, Hardware & Electrical Tools, Media, Packaging, Publications and Industrial Machinery & Products



Promoting competitive markets

Activities covered under the FAIR COMPETITION ACT

Competition Protection

- Price fixing
- Bid rigging
- Exclusive dealing
- Abuse of dominance
- Resale price maintenance
- Agreements that substantially lessen competition

Consumer Protection

- Double ticketing
- Misleading advertising
- Sale above advertised price

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