



**Comments on the Bill entitled  
“The Dairy Development Board Act, 2005”**

**April 10, 2006**

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On March 16, 2006, the Staff of the Fair Trading Commission (FTC) attended a meeting of the Select Committee of Parliament at Gordon House, to comment on the Jamaica Dairy Development Board (JDDDB) Bill.

Whereas our contribution at said meeting was limited to outlining the implications of clause 5(2)(e) for the Fair Competition Act, it is important that we document our thoughts on other clauses which we feel would also adversely affect competition in the dairy industry. A competitive business environment is necessary for the efficient operation of an industry. The competitiveness of the dairy industry should be of utmost importance to the Jamaica Dairy Development Board (‘Board’) since one of its main objectives, as set out in clause 4 of the JDDDB Bill, is the promotion of ‘...efficiency in the production, processing, marketing and other trade in dairy products’.

**General Comments**

The Bill contemplates that the Board consider it to be in the interest of the dairy industry to use our limited productive resources efficiently. We suggest that the Board should be equally mindful that efficiency can not be attained without a cost; in all likelihood, the goal of promoting efficiency in the industry will come into conflict with other equally commendable goals. In order for the Board to engender a greater level of efficiency in the market, it will have to accept that the least efficient farmers might not be able to remain in the market; and greater inequities in the distribution of profits might occur as the industry becomes more efficient. While it is not immediately obvious to anyone that the goal of efficiency should have primacy over other goals such as greater employment opportunities or a more equitable distribution of income, it is clear that these goals can not be successfully pursued simultaneously. The pursuit of any one of these goals will be frustrated by attempts to contemporaneously pursue another goal. It means therefore, that the Committee must decide whether the prime objective of the JDDDB will be to promote efficiency or pursue some other useful and worthy goal.

**Specific Comments**

We now highlight clauses in the JDDDB Bill which we feel might serve to undermine competition in the industry.

### ***Interpretation***

It is noted that “milk” is to be interpreted as “milk from cows”: For our own edification, we seek to know the basis upon which milk from other sources, such as goat and soy, is excluded from the jurisdiction of the JDDB Bill.

### ***Clause 4***

For the written record, we hereby respectfully request, as indeed we did at the aforementioned meeting of the Joint Select Committee, that the promotion of competition and the role of the FTC be explicitly recognised in the JDDB Act given our mandate and the in-house expertise we possess in the construction and reconstruction of competitive markets. Since clause 4 sets out the objectives of the Board, we feel it might be an appropriate place for this inclusion.

### ***Clause 5(1)(d)***

We recognise that (i) collecting and analysing data; and (ii) disseminating information, are important aspects of promoting efficiency. We strongly believe, however, that restrictions should be placed on the nature of the information that may be requested and the format in which the information may be disseminated. Our view is that the Board should be permitted to

- (i) request only information which is reasonably necessary for the achievement of the stated objectives and
- (ii) disseminate information in an aggregated format only; and only with a time lag.

These views are informed by our awareness that cartel activities tend to prevail in environments in which timely, firm-specific information is readily accessible. Cartel activities include price-fixing, market allocation and bid-rigging. These activities are prohibited under various sections of the Fair Competition Act, because they undermine competition and hence efficiency. Compliance with item (i) above would mean, for instance, that the Board would not be allowed to request information on the prices of dairy products because its ability to effectively promote efficiency in the industry should be independent of the prices at which dairy products are traded. Similarly, compliance with item (ii) would mean that if the Board collects information on the quantity of milk sold by each dairy farmer in January 2005, the information on milk quantity should not be disseminated before June 2005, for instance; and data on the quantity sold by any one farmer should not be recoverable from the information disseminated.

### ***Clause 5(2)(e)***

Fixing or “establishing” farm gate prices for milk is a collusive activity and is expressly prohibited under the Fair Competition Act. We confirm that the suggestion to replace the word “establish” with “recommend” would satisfactorily address our concerns provided that the Board is not able to apply sanctions on dairy suppliers who refuse to adopt the recommended price.

Jamaica has limited productive resources. The relative prices of goods across the various industries will determine the allocation of resources throughout the economy. The efficient use of these resources dictates that more resources are to be placed in the production of goods and services which the society values the most and which the economy can produce in a cost-effective manner. A market-determined price mechanism is the best means to ensure that resources are allocated in each industry based on the needs of the society. Price-fixing is a violation of the FCA because the efficient allocation of Jamaica’s limited productive resources

relies on the market's ability to adjust prices in response to changes in market forces. If the Board is allowed to set or otherwise unduly influence the farm gate price of milk, the resources allocated to dairy milk production would be based on the needs of dairy farmers and not on the needs of the wider society.

### ***Clause 9***

This clause should recognise the Access to Information Act, 2002, as was discussed on March 16, 2006.

### ***Clause 18***

The imposition of a cess on trade in the dairy industry would not contravene the Fair Competition Act. We note that the cess is to be levied on all dairy products sold in Jamaica and so the relative competitiveness of imported and locally produced dairy products will be unaffected. However, the cess will diminish the relative attractiveness of dairy products as inputs for other final goods and services. By imposing the cess, there is a strong likelihood that firms that use dairy products as inputs in their production process will find less expensive substitutes and the demand for dairy products will ultimately decline. The Board should therefore resist the temptation to set the cess at a level that would impair the attractiveness of dairy products as inputs in the production of other final goods.

### ***Clause 22***

We are of the opinion that the non-transferability of a licence granted under the JDDB Act would hinder operations needlessly in certain situations. We would prefer that the Act specify conditions under which the licence may be transferred without the need for re-applying. Circumstances under which we think the licence should be transferable include: when a company changes name, but ownership is unchanged; the death of a licensee who was in a partnership.

### ***Clause 25(1)(c)***

We believe that the clause governing the suspension of a licence is open to abuse. Specifically, 25(1)(c) grants the Board the authority to suspend the licence if "...it is satisfied that it is not possible to carry out a proper inspection of the licensed operation." We contend that the clause empowers the Board with a discomfiting measure of discretion in that it may suspend licences even if the licensee is not in breach of any regulation. The unfairness of this clause is obvious if one considers that an operator could have his licence suspended under 25(1)(c) because, through an act of God, the Board finds it impossible to carry out a proper inspection of the operation.

Further, the Act is silent on the procedure for withdrawal whenever a suspension is executed under section 25(1)(c). In the interest of transparency, therefore, we suggest that the Act

- (i) provide guidelines for the Board to follow when exercising its power of suspension under clause 25(1)(c) and
- (ii) specify a procedure for the withdrawal of a suspension executed under clause 25(1)(c). This procedure should include time lines for the various steps.

### ***Clause 27***

We note that the potential for abuse of the powers of suspension is somewhat mitigated by the fact that Section 27 of the Act allows an appeal by an individual whose licence was either

suspended or revoked, to be made to the Minister of Agriculture. The right to appeal to the Minister is applicable also to situations in which a licence was refused. We encourage the Committee also to include provisions in the Act to permit appeals to a Court of Law against the decision of the Minister. In fact, this right of appeal should extend to all decisions made by the Board and we respectfully suggest that this be reflected in the JDDB Act.

### ***Conflicts of Interests for Board Members***

Notwithstanding confidentiality firewalls as set out in Section 9 of the Act, we recommend that the Act explicitly prohibit the appointment of Board members who have a vested interest in the dairy industry. This is to say that no serving member of the Board should have economic interests in the dairy industry. This safeguard will reduce the potential for conflicts of interests which may arise as appointed Board members carry out their duties. Please note that this point is not being made in the context of the Fair Competition Act, but as a general caution.