



Case # 4904

Competition issues regarding the operations of Caymanas Track Limited and Licensed Bookmakers: Opinion from the Fair Trading Commission

February 27, 2003

1. Introduction

- 1.1 On February 10, 2003, the Fair Trading Commission (FTC) received a letter, dated February 7, 2003, from the Betting, Gaming and Lotteries Commission (BGLC) regarding a restriction placed on licensed bookmakers.
- 1.2 The BGLC sought the FTC's opinion on a provision in the Second Schedule of the Betting, Gaming and Lotteries Act, which requires that licensed betting shops be closed one-half hour before the scheduled time for the first locally run race.
- 1.3 The BGLC in said letter informed that Caymanas Track Limited (CTL), which is involved in the same business as the licensed bookmakers, is authorised to operate Off Track Betting Parlours (OTB), which are not subjected to the above-mentioned provision.

2. The contentious provision

- 2.1 The Section 2 of the Second Schedule of the Betting, Gaming and Lotteries Act states the following: -
- 2.2 2.—(1) The times during which licensed premises may be opened to effect betting transactions shall be—
 - 7:00 a.m. to 6:00 p.m. (Monday to Thursday)
 - 7:00 a.m. to 7:30 p.m. (Friday)
 - 7:00 a.m. to 6:00 p.m. (Saturday)

Provided that—

- (a) on the Thursday immediately preceding Good Friday, the time for opening shall be 7:00 a.m to 7:30 p.m.;
- (b) when horse racing is held in Jamaica on any day on an approved racecourse, the time for opening shall be 7:00 a.m. to one-half-of-an-hour before the scheduled time for the start of the first race on such day.

(2) Licensed premises shall be closed throughout Good Friday and every Sunday and at all other times (other than the times for opening specified in sub-paragraph (1)), and shall not be used for any purpose other than the effecting of betting transactions or pool betting.

3. Issues Arrising

- 3.1 The CTL and the over eleven licensed bookmakers are engaged in a similar line of business, which entails receiving and negotiating bets. Both CTL and the licensed bookmakers operate betting shops which are located throughout the island. At these shops bettors can place their bets on horses in both local and foreign horse races. CTL and the licensed bookmakers are therefore competitors.
- 3.2 The CTL-operated OTBs are not subjected to the opening hours restrictions imposed upon the betting shops operated by licensed bookmakers, which are required to be closed by one-half hour prior to the scheduled time of the first local race. This means that the licensed betting shops are unable to sell to persons who wish to purchase bets on a race-by-race basis.

4. Application of the Fair Competition Act

- 4.1 This matter falls within Section 17 of the Fair Competition Act (FCA) which addresses agreements which have as their purpose or effect the substantial lessening of competition in a market. (See Appendix 1 for Section 17 of the FCA).
- 4.2 In particular, Subsection 17(2)(e) applies to this situation. It states that the section applies to agreements which contain provisions that “apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.”
- 4.3 A provision in an agreement which is caught under Subsection (2) is automatically void by virtue of Subsection (3) unless it qualifies for exemption under Subsection 4. Subsection (4) states that Subsection (3) does not apply to any agreement or category of agreements the entry into which has been authorized under Part V¹ or which the Commission is satisfied—
 - (a) contributes to—

¹ Part V of the FCA deals with the authorization of an agreement or activity, which would be otherwise considered to be anti-competitive, by the Commission.

- (i) the improvement of production or distribution of goods and services; or
 - (ii) the promotion of technical or economic progress,
- while allowing consumers a fair share of the resulting benefit;
- (b) imposes on the enterprises concerned only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a); or
 - (c) does not afford such enterprises the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

5. Analysis of issues

- 5.1 The relevant provision of the Second Schedule imposes two restrictions on licensed betting shop operators. These are: -
 - (a) The opening hours: these shops must be closed by one-half hour prior to the scheduled time for the start of the first local race.
 - (b) Line of business: these shops cannot be used to do any other business apart from the effecting of betting transactions or pool betting.
- 5.2 The request for opinion relates to the first restriction.
- 5.3 The FTC generally considers an agreement which contains restrictive terms to have the potential to substantially lessen competition if the agreement affects at least 25% of the market involved. Thus were the market to be defined as the market for local horse race betting then if the restriction affects 25% or more of that market (in terms of either quantity or revenue) competition in that market would be considered to be lessened substantially.
- 5.4 Given that the restriction is not placed on licensed bookmakers by their competitors, but instead by Statue, the FTC generally advises that if the restrictive provision does not satisfy Section 17(4) of the FCA then the relevant Statue should be amended to exclude the restrictive term.

6. Recommendation

- 6.1 The provisions in the Second Schedule are clearly restrictive and inimical to fair competition between CTL and licensed bookmakers. For there to be a truly competitive environment, restrictive arrangements should be kept at the barest minimum and be able to satisfy the test set out in Section 17(4).
- 6.2 The FTC therefore recommends that BCGL examine the provisions set out in the Second Schedule and make a determination as to whether there are overriding benefits which would satisfy the requirements of Section 17(4) of the FCA.

Appendix

A. Section 17 of the FCA

17.— (1) This sections applies to agreements which contain provisions that have as their purpose the substantial lessening of competition, or have or are likely to have the effect of substantially lessening competition in a market.

(2) Without prejudice to the generality of subsection (1) agreements referred to in that subsection include agreements which contain provisions that—

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) affect tenders to be submitted in response to a request for bids;
- (e) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (f) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts,

being provisions which have or are likely to have the effect referred to in subsection (1).

(3) Subject to subsection (4), no person shall give effect to any provision of an agreement which has the purpose or effect referred to in subsection (1); and no such provision is enforceable.”

(4) Subsection (3) does not apply to any agreement or category of agreements the entry into which has been authorized under Part V or which the Commission is satisfied—

(a) contributes to—

- (i) the improvement of production or distribution of goods and services; or
- (ii) the promotion of technical or economic progress,

while allowing consumers a fair share of the resulting benefit;

- (b) imposes on the enterprises concerned only such restrictions as are indispensable to the attainment of the objectives mentioned on paragraph (a); or
- (c) does not afford such enterprises the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.”