CONSUMER WELFARE WITHIN COMPETITION POLICY
- INSTITUTIONALIZING COMPETITION POLICY IN THE CSME[1]

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Ladies and gentlemen, good afternoon. Allow me firstly to thank the CSME Unit of the CARICOM Secretariat, organizers of this Workshop, for providing us, the Jamaica Fair Trading Commission, with the opportunity to speak today, and for providing me with the opportunity to visit this beautiful island again.

I must say that it is encouraging to have such a good turn out to this event; and to see persons from varying industries and different departments of Government here today.

I begin with words from the United States of America's Declaration of Independence of 1776.

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are life, liberty and the pursuit of happiness.- That to secure these rights, Governments are instituted among men."-

[1] This paper was written for the CSME's *Competition and Consumer Welfare Sensitisation Workshop*, held on March 18, 2010 in St. Kitts & Nevis.
[2] The paper was written by David Miller and Kevin Harriott, Competition Bureau Chief, of the Fair Trading Commission, Jamaica. It was presented by David Miller.

These famous words, taken from the American Declaration of Independence, establish the true relationship between Governments and the welfare of men; that Governments exist solely to serve the interests of the public. There is no better way to lay the foundations for the discussion we were asked to lead on the topic **"consumer welfare within competition policy".**

This is important because in order to institutionalize Competition Law, we must have an active consumer base.

A. What is Competition Policy?

Competition policy comprises legislation and polices geared toward enhancing competition in domestic and international trade. The primary components of competition policy are:

(i) ***Competition law*** - which reflects the Government's position on trade within national borders;

(ii) ***Deregulation/liberalisation*** - reflects the Government's position on the removal of regulations which constrains the operation of the market process;

(iii) ***Privatisation*** - reflects the Government’s position on the transferring of the ownership of a business from the Government to the private sector;

(iv) ***International trade policy*** - governs trade across national borders;

(v) ***National Industrial Policy (NIP)*** - describes the Government's strategy to offer preferential treatment to specific sectors of the economy; and

(vi) ***Intellectual Property Rights (IPR)*** - which includes the law pertaining to patent, copyright, trademark and geographical indication, that establishes the exclusive right for individuals to use IPRs for commercial gain.[3]

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[3] It could be argued that IPR law is consistent with competition law in that while it hinders competition <u>in</u> the market, it also promotes competition <u>for</u> the market.

I will briefly describe two of these components.

Competition law and international trade policy

International trade policy strictly prohibits *dumping*. Dumping, by definition, occurs whenever a manufacturer of a product charges a price in the export market that is lower than the price charged in the domestic market. Dumping is an example of a broader class of conduct referred to by economists as *price-discrimination,* whereby a supplier charges different prices to different groups of consumers of the same good.

Economists, based on extensive studies on the matter, have found that price discrimination could improve consumer welfare under certain conditions, by making the good available to a greater number of consumers. It was found also, that price discrimination could harm competition. In the interest of consumer welfare, therefore, it is best to assess the likely effect of price discrimination on competition before prohibiting it; as to strictly prohibit dumping will unduly deny consumers of the established benefits of price discrimination.

If price discrimination was strictly prohibited, an airline could not charge economy class passengers a lower airfare than first class passengers. The likely result would be a significant increase in the airfare for economy class and many persons who could have afforded to travel economy class with price discrimination would be unable to do so without price discrimination.

Similar arguments could be advanced for the motion picture industry where the price of admission to movie theatres is higher for adults than it is for children and senior citizens; and for the telecommunications industry where the price of making a call is higher during weekdays than it is during weeknights and weekends.

Competition law and National Industrial Policy

National Industrial Policy describes the Government's strategy to offer preferential treatment to specific domestic industries. The tourism industry and manufacturing sector are examples of segments of the economy which have benefited from preferential treatment. The Jamaican

Government, for some time, has offered incentive programs and granted concessions to business interests which operate in the tourism industry.

Examples of these programs and concessions include the Hotel Incentives Act (lasting 10-15 years); the Resort Cottages Incentives Act (7 years); Attraction Incentives (up to 5 years); relief from Income Tax, Customs Duty and GCT; and assistance with fast-tracking applications of foreign nationals (Planning Institute of Jamaica .2008. Economic and Social Survey of Jamaica, pp. 17.3).

It is clear that the Government, through industrial policy, could improve the competitiveness of selected domestic markets. Some policymakers mistakenly cite the policy's success in the targeted industry as evidence of the policy's effectiveness. That however, is an inappropriate benchmark against which the policy should be assessed.

The appropriate benchmark should be whether the resources allocated under the NIP could be reallocated to other industries and generate an even greater level of public benefits. Essentially, the effectiveness of any industrial policy depends crucially on the ability of policymakers to maximise public surplus from the allocation of the public's productive resources across the various industries.

History has shown that policymakers could never have at their disposal, the level of information that is required to efficiently allocate resources across the various industries within the domestic economy. Conceptually, and in practice, it has been demonstrated that the process of competition is the most effective means of allocating public resources across the economy.

National Industrial Policies direct productive resources to select industries irrespective of whether consumers value the goods produced therein. Contrastingly, the competitive process organises productive resources in such a manner that more resources are allocated to produce the goods which consumers value the most; and less resources are allocated to industries which consumers value the least.

Competition orchestrates the use of public resources by changing the relative prices of goods and services across the industry. Competition directs more resources to industries in which the prices are relatively high and fewer resources to industries in which the prices are relatively low.

One of the interesting things about the Jamaica FTC is that its foundation was built on consumer protection directly, rather than on competition protection; and this has yielded positive results for us as an institution and for our economy over time.

At the time when the FTC's doors opened back in 1994, it was an era defined by our Government's dramatic reform programs, which saw the liberalization of most sectors, the privatization of state owned enterprises, the lifting of import quotas and the removal and reduction of several trade barriers. It brought technological advancement that impacted on, and further added to, the propelling of economic activities. There were new ideas, new services, and new ways of doing business. There was a climate of business opportunities for entrepreneurs and of windfall for consumers. The level of consumer choice was unprecedented.

The so-called "freeing up" of markets promised enormous benefits to the economy, to businesses and to consumers but for these benefits to be realized the proper systems and structure must be put in place.

It has not been an easy road, we did face challenges, challenges such as (a) limited human resources and expertise in the area; (b) insufficient funding; (c) an untrained judiciary in the area of competition law; (d) inconsistent or incoherent regulatory policies; and (e) a lack of a competition culture within our society.

At the same time, we placed high priority on creating the right infrastructure to ensure the effective execution of our function. As such we placed special focus on (a) hiring competent 'trainable' personnel (b) furnishing our offices; (c) and using the media to sensitize the general public on our core function.

In summary, our role is to ensure that markets within Jamaica are competitive; that there are no impediments to competition and that firms do not engage in activities that distort competition or negatively harm the competitive process.

Some of the sectors that we have impacted are:

- Airline industry,
- Veterinary industry,
- Furniture and appliances sector,
- Motor vehicle sector – New car, Used car and repairs
- Telecommunications
- Dairy industry
- Beer market
- Baking
- Aspects of the banking sector
- Education
- Agricultural sector
- The market for Remittance services

In addition to the enforcement of the Law, we also engage in non-enforcement activities, or advocacy, through which we inform the Government and other public agencies, of how their conduct may be impeding the competitive process. As we heard earlier, Government is one of the bodies that often times infringe on competition law through its policies. And over the past 5 years or so we have had to devote more resources to informing Government policy. Last year alone we made submissions on 10 sectors or industries – on policies being created for agriculture, commerce, gaming, manufacturing, housing, tourism, health.

We also conduct market studies to gain an in-depth understanding of how sectors and markets are working, ultimately to determine whether there are impediments to competition. Our work has changes the behaviour of players in several industries, including:

- Banking
- Distribution of basic food items
- Agriculture
- Telecommunications
- Bill Payment
- Distribution of Pharmaceuticals

All these markets or sectors which we have impacted upon, have at least one thing in common – i.e. the benefits to consumers – improving consumer welfare.

Before I go into the next part of my presentation, I will say something about the question that was asked earlier about LIAT, Caribbean's Airline. i.e. how can we assist in making LIAT a more comfortable and reliable carrier? I will share with you briefly the experience of the Irish who had a national airline which for many years benefited from varying forms of Government protection. Ryanair entered the Irish market by offering a low priced affordable service, a reliable alternative to the established national airline which benefited from some amount of protection and subsidies. Upon entering the market Ryanair encouraged the creation of new reasons for persons to travel to main cities in London and Scotland. For example, weekend travel to visit family and friends, attending football games and other sporting events.

Ryanair sold the idea that people could afford to enjoy some of the benefits that other nearby cities have to offer, at an affordable price. Before long, the demand for short flights between London, Scotland and Ireland increased significantly, and the domestic (Irish) airline responded by making itself into a more efficient operation, by creating new products and services and by improving the marketing of its products and the services offered. Before long, it was surviving on its own without Government's support.

I am not saying that this situation should be duplicated of replicated in order to improve the services currently offered by LIAT as the environment may well be different. This is an example of how competition forces innovation and results in increased efficiencies and consumer welfare.

As I move through the next segment of my presentation, I ask to you to think of the Ryanair example.

B. Fundamental Principles of Competition Policy and Consumer Welfare

It has been our experience and the experience of most if not all competition agencies, that the relationship between competition policy and consumer welfare is governed by three fundamental principles.

Principle 1 - Competition policy exists within the realms of consumer welfare and not the other way around.

Principle 2 - Competition policy should encourage only conduct which promotes consumer welfare.

Principle 3 - Competition policy imposes an obligation on consumers, not only on merchants.

PRINCIPLE 1: Competition policy exists within the realms of consumer welfare and not the other way around.

Some persons have formed the view that there exist a somewhat perverse relationship implied by the topic **"consumer welfare within competition policy."** Specifically, this topic suggests that "competition policy" is the greater good and that "consumer welfare" is merely a component of the policy. Nothing could be further from the truth. The truth is that, consistent with the American Declaration of Independence, consumer welfare is the greater good within which competition policy plays a subservient role. Accordingly, I will address the topic of "competition policy within consumer welfare."

To see the role of competition policy in promoting consumer welfare, we need to recognize that most modern societies are organized such that at any given point in time, the vast resources of the society are under the control of a few individuals who are selected to form the Government.

The Government designs policies to safeguard public welfare. Policies reflect the Government's position regarding the use of public resources in a specified aspect of public welfare. If we accept that consumer welfare is directly related to the extent to which the unalienable rights of the public are secured, I argue that competition policy promotes consumer welfare by securing the public's right to pursue happiness. The public derives happiness from a variety of sources such as travelling to far away places; dining at a five star restaurant; shopping; watching the West Indies clobber Zimbabwe; or participating in Carnival. Although the source of happiness is likely to vary considerably among men, it seems reasonable to argue that the pursuit of happiness usually requires the consumption of goods and or services. Competition policy promotes public welfare by facilitating their pursuit of happiness by way of access to goods and services.

PRINCIPLE 2: Competition policy should encourage only conduct which promotes consumer welfare

As a consequence of the first Principle, it is my position that any provision which does not promote consumer welfare should be excluded from competition policy. Competition law satisfies this basic requirement. What I am saying is that it would not be okay simply for competition law to have some of the provisions protecting consumer welfare; I am saying that every provision should protect consumer welfare.

Competition law protects consumers directly and indirectly. The substantive provisions of competition legislation are grouped under two broad headings: consumer protection and competition protection. The groupings are somewhat misleading however, in the sense that it suggests that consumer protection and competition protection are distinct objectives. In practice, however, both sets of provisions are alternative means of achieving the common goal of promoting consumer welfare.

Consumer protection provisions directly promotes consumer welfare by prohibiting merchants from engaging in deceptive practices such as misleading representation, double-ticketing and bait-and-switch. It ensures that economic activities are organised by the competitive process.

The competition process provides the greatest incentives for merchants to offer consumers the best quality goods and services at the lowest possible prices. The competitive process generates the greatest possible level of public surplus. By protecting the competitive process therefore, competition protection provisions indirectly promote consumer welfare.

PRINCIPLE 3: Competition policy imposes an obligation on consumers, not only on merchants.

We have already established from Principle 2 that the competitive process provides the strongest incentives for merchants to supply quality goods at the lowest possible prices. As a direct consequence, the revenue earned in competitive markets are sufficient to cover only the costs of doing business; that is, merchants operating in competitive markets earn zero economic profits.

There is always an incentive, therefore, for merchants to alter market conditions to allow them to earn revenues in excess of their costs. At all times, the main objective of firms is to make as much profit as it can. To discourage such conduct, Governments establish national competition authorities such as the Fair Trading Commissions in Barbados and Jamaica; and regional authorities such as the CARICOM Competition Commission.

The important message we would like to leave with you this afternoon is that even if merchants conduct themselves in accordance with the various national and regional legislation governing competition policy, it is still not automatic that merchants will offer consumers the best deals on goods and services. What would still be crucial for this to happen is the active participation of consumers in the process.

To participate in the process, consumers must be informed and contribute to the success of the competition process by "shopping around" and acquiring the goods and services of only those merchants which offer the highest quality goods and services at the lowest prices. In so doing, merchants which are unable to offer the best deals to consumers risk becoming unprofitable.

The fact that active consumer participation is required for a successful policy is by no means unique to competition policy. By way of analogy, consider the rule of Government. It is clear that CARICOM member states are guided by the principle of democracy, i.e. the rule of the people, by the people and for the people.

What is less clear is the reason that democracy thrives in CARICOM. Some might be tempted to argue that democracy exists because of the Constitution, the highest law in the land. I believe, on the other hand, that the Constitution only facilitates the democratic process but falls short of actually establishing it. Without the active participation of the people, true democracy would not exist. Without the active participation of the public, the public could very well find itself being governed by "democratically elected dictators" rather than by the democratic process.

But what does it mean for the public to actively participate in the democratic process? Among other things, active participation requires that the public inform themselves about the platforms offered by political parties and vote for the party whose policies are most consistent with their welfare. Accordingly, participating in the democratic process requires effort on the part of the voting public

Concluding Remarks

We have offered a view of competition policy which may differ from how it may be viewed by many. Specifically, we have argued that competition policy, without more, is insufficient to promote consumer welfare. Our view sheds light on the empowering character of competition policy. For in pursuit of his happiness, a consumer will acquire goods according to his willingness and ability to pay for these goods. The goods that will make one consumer happy will not necessarily make another consumer happy.

Consumer preferences vary from individual to individual and from time to time. Accordingly, without the continuous input from the public, it is unlikely that any system for distributing goods to consumers could accurately reflect consumer preferences. In a seamless manner, the competitive process captures consumer preferences and reallocate productive resources to reflect these preferences.

Consumer preferences are reflected by the relative demand for each good. All other things constant, an increase in the demand for a good will result in an increase in the relative price of the good. The increased price will increase the expected returns from supplying the product; and most importantly, the competitive process ensures that more resources are allocated to produce goods that consumers prefer the most.

The pure genius of competition policy is that it does not impose on consumers, the goods and services that the Government believes will promote consumers' welfare. The true role of competition policy is to foster an environment in which consumers are empowered to pursue their happiness by guiding merchants to produce affordable goods and services with the quality and variety demanded by them.

Someone once remarked that "The consumer is King!"

The consumer will not reign, however, unless he claims the throne. To claim his throne, consumers must play an active role by keeping themselves informed about the goods they would normally purchase and ensure that they purchase the good from only the merchants which offer the best deals.

Thank You!