



## **Investigation into A provision contained in the Second Schedule of the Betting, Gaming and Lotteries Act**

1. In February 2003, Betting Gaming and Lotteries Commission (BGLC) sought the Fair Trading Commission's (FTC) opinion on a provision in the Second Schedule of the Betting, Gaming and Lotteries Act, which requires that betting shops operated by Licensed Bookmakers be closed one-half hour before the scheduled time for the start of the first locally run race. The Staff of FTC opined that the provision is restrictive and inimical to fair competition between Licensed Bookmakers and Caymanas Track Limited (CTL), which operates a number of betting parlours and therefore competes with Licensed Bookmakers. The Staff recommended that the provision be amended to remove the restriction.
2. In March 2003, Track Price Plus Limited, a Licensed Bookmaker, made a complaint to the FTC regarding the opening hour restriction placed on Licensed Bookmakers. Specifically, it complained that due to the restriction, Licensed Bookmakers are denied the opportunity to sell bets on English and American races. It claimed also that betting shops operated by CTL are not subject to the same opening hour restriction and therefore their ability to sell bets on these races is not restrained.
3. As a result of a Request for Opinion sought by BGLC and the complaint from Track Price Plus Limited an investigation was carried out in relation to Section 2 of the Second Schedule of the Betting, Gaming and Lotteries Act. The investigation was carried out in reference to Section 17 the Fair Competition Act (FCA).
4. Section 17 of the FCA proscribes agreements 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". Subject to Section 17(4) all such provisions are unenforceable. Under Section 17(4), the prohibition may not apply to an agreement which the Commission is satisfied "(a) contributes to the improvement of production or distribution of goods and services; or 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. The investigation focused on the following provision of the Second Schedule of the Betting, Gaming and Lotteries Act:

Section 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 times (other than the times for opening specified in sub-paragraph (1)), and shall not be used for purpose other than the effecting of betting transaction or pool betting.

6. This type of provision may be classified as a restrictive arrangement.
7. Specifically, FTC is concerned that the provision has the purpose of hindering or preventing competition between Licensed Bookmakers and CTL. The FTC is also concerned that even if the purpose of the provision is not to hinder or prevent competition it has the effect of hindering or preventing competition.
8. In conducting the investigation under Section 17 of the FCA, the FTC examined the provision contained in the Second Schedule of the Betting, Gaming and Lotteries Act and enforced by BGLC, within the context of the following four-step approach:

*Definition of the relevant market*—this is necessary in order to establish the market which may be affected by the provision and the players therein;

*Assessment of market shares*—this is necessary to analyze the position of the players in the relevant market and the extent to which competition is affected, if there is any competitive effect. In most jurisdictions, an enterprise is considered to be able to effect an arrangement that may substantially lessen competition if it has a market share of at least 25% of the relevant market. By extension, the FTC believes that a provision can have the effect of substantially lessening competition between/among players in a market if the players to which the provision is favorable, collectively have a market share of at least 25%.

*Assessment of effect on competition*—Section 17(1) prohibits provisions which have as their purpose or effect the substantial lessening of competition in a market. It is therefore necessary to first establish what the purpose of the provision is. If it is not clear that the purpose is to lessen competition then it would be necessary to consider whether it might have that effect.

*Assessment of inapplicability*—if it is found that the purpose or effect is to substantially lessen competition in the relevant market, then an assessment in accordance with Section 17(4) should be carried out, i.e., to determine whether or not the provision contributes to, or is exclusively directed to, improving the production or distribution of goods or to promoting technical or economic progress and consumers are allowed a fair share of the resulting benefit; is indispensable to the attainment of improved production or distribution; or does not afford an enterprise the possibility of eliminating competition in respect of a substantial part of the goods or services concerned. If the provision is found to satisfy Section 17(4) then it shall remain in force, despite its ex facie anti-competitive purpose or effect.

### **Definition of the relevant market**

9. The relevant product market defines the product boundaries within which competition meaningfully exists, and includes only those products that are “reasonably interchangeable” by consumers for the same purpose. In this case, it was defined to include betting on horse racing. The providers of the relevant product are CTL and the Licensed Bookmakers. They both offer similar products to consumers. They both receive and negotiate bets on horse racing.
10. The geographic market is the “area of effective competition” in which the suppliers of the relevant product operate and to which the purchaser can practicably turn for the relevant product. In this case the geographic market is defined to cover the entire island.

*The relationship between CTL and Licensed Bookmakers:*

11. The Regulations require that Licensed Bookmakers negotiate and receive bets at declared odds only. CTL however is the company responsible for determining these odds. Therefore based on the law Licensed Bookmakers are dependent upon CTL although they are both competitors in the same relevant market.

### **Assessment of market shares**

12. CTL and fifteen (15) independent Licensed Bookmakers are authorized under the Betting, Gaming and Lotteries Act to receive and negotiate bets in Jamaica on horse racing. CTL operates 67 off-track betting (OTB) parlours while the 15 Licensed Bookmakers collectively operate 569 betting shops. The total revenue for the horse racing industry for the period 2001 – 2002 was Ja\$4,964,818,033.00 of which CTL generated 59.15%.
13. For the period 2001 – 2002, the total revenue generated by OTB parlours was \$2,240,959,051.00, while the total revenue generated by the Licensed Bookmakers was \$2,028,265,997.00. This means that for that period OTB parlours generated approximately 52% of the revenue of all legal betting shops, excluding shops operated at the racetracks. This market share meets the threshold for having the potential to substantially lessen competition, under Section 17 of the FCA.
14. For the purpose of this analysis entry barriers are not of importance since the provision applies to all Licensed Bookmakers. An entrant bookmaker would have to

have received a licence from BGLC in order to operate; however the entrant would be subject to the opening hours restriction. Admittedly, the provision favours CTL but it is not of CTL's making. It is contained in the legislation which governs the industry.

15. The analysis shows that CTL generates over 25% of the revenue in the industry. CTL therefore has substantial market power and the provision, as is, has had, is having and is likely to continue to have the effect of substantial lessening of competition between CTL and the Licensed Bookmakers.

### **Assessment of provision in relation to Section 17 of the FCA:**

16. The restrictive provision of the Second Schedule of the Betting, Gaming and Lotteries Act was investigated in reference to Section 17 of the FCA, in particular, to determine:

- the anti-competitive effects; and if found to be anti-competitive—
- whether it contributed to, or was exclusively directed to, improving the production or distribution of goods or to promoting technical or economic progress and consumers were allowed a fair share of the resulting benefit; or did not afford such enterprises concerned the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

17. The following presents the Staff's findings as they relate to the provision.

### **The restrictive provision:**

18. Section 2(1)(b) states "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".

19. The Staff finds that:

- The provision negatively affects competition between CTL and the Licensed Bookmakers, as CTL is authorized to open up to 67 ½ hours per week while Licensed Bookmakers are authorized to open for approximately 56 ½ hours per week, where there are two local race days for the week. Licensed Bookmakers, having to close their shops prior to the start of the first race, are deprived of customers who prefer to place their bets on a race-by-race basis.
- The provision negatively affects Licensed Bookmakers ability to sell bets on international horse races on the days which horse racing is held in Jamaica, since they have to close their shops early.
- The provision imposes undue restrictions on Licensed Bookmakers and limits their ability to generate revenue.
- The provision does not satisfy Section 17(4) of the FCA.
  - It does not result in contribution to the improvement of production or distribution of goods or services; or the promotion of technical or economic progress while allowing consumers a fair share of the resulting benefit;
  - It imposes unnecessary restrictions;

- It allows for the possibility of eliminating competition in respect of a substantial part of the services concerned.
- 20. The BGLC, in its response to our information request, advised the Staff of the FTC that removing the opening hour restriction would mean that Licensed Bookmakers and OTB palours would operate under the same regulatory conditions; and it is foreseeable that some OTB palours reported sales will be negatively affected by the potential increased competition from Licensed Bookmakers. This can be interpreted to mean that at least one of the results of the provision is the reduction of competition between CTL and Licensed Bookmakers.
- 21. As stated above, given the Regulations governing the industry Licensed Bookmakers must sell bets at odds declared by CTL. If removing the restrictive provision negatively affects CTL’s ability to determine and declare odds, then other options for declaring odds should be examined.
- 22. The Staff considers Section 2 of the Second Schedule of the Betting, Gaming and Lotteries Act to be unenforceable under Section 17(3) of the FCA, which states “..., no person shall give effect to any provision of an agreement which has the purpose or effect referred to in subsection 17(1); and no such provision is enforceable.”

### **Recommendation**

- 23. The Staff therefore recommends that Section 2 of the Second Schedule of the Betting, Gaming and Lotteries Act be amended to remove the opening hour restriction placed on Licensed Bookmakers. The law should be amended so that Licensed Bookmakers are allowed the same privileges as CTL. Restrictions placed on operators should be minimal and should not restrict their ability to provide the services which they are set up to provide.

