

The Coconut Industry Board: Implications for competition in the Jamaican coconut industry

January 28, 2002

Executive summary

In promoting competition, the Fair Competition Act (FCA) prohibits agreements and practices that result in the restriction of competition in any defined market. Two broad categories of prohibited activities are (a) agreements that have, or are likely to have, the effect of substantially lessening competition in the market; and (b) abuse of dominance respectively.

Commodity boards in Jamaica have the duty to promote the interests of the relevant industry with an emphasis on the welfare of the growers and farmers. In some cases, the boards were given the exclusive rights to certain markets and the powers to regulate the industry. Effectively, the boards tend to have a monopoly in their respective markets. It is this monopoly power, and the potential consequences that may lead to anti-competitive behaviour in the respective markets, that raise concerns from the perspective of the FCA.

The coconut industry is governed by three Acts – the Coconut Industry Aid Act (1932), Coconut Industry Insurance Act (1949) and the Coconut Industry Control Act (CIC) (1945). The CIC Act establishes the creation of the Coconut Industry Board (henceforth, the “Board”).

The objectives of this analysis are twofold:

- To assess under sections 17(1) and 20(1); if the powers and activities of the Board are in any way anti-competitive; and if so
- 1. To carry out an analysis in accordance with §17(4) and 20(2). These subsections in essence allow for the “authorization” of practices that may appear to be anti-competitive but that contribute to the improvement of production or distribution of goods and services and the promotion of technical or economic progress while allowing consumers a fair share of the resulting benefit. With an authorization, an agreement is not considered to be in contravention to the FCA.

With regard to the first objective, the analysis considers whether the powers and activities of the Board lead to a monopoly or dominance by the Board in any relevant market and, if so, is there any evidence of abuse of dominance.

The key activities of the Board are in research into coconut strains and coconut products, cultivation of seed coconuts and seedlings, the export of seed coconut and the purchase and reselling of copra. The Board is governed by nine directors, four of whom are appointed by the Ministry of Agriculture. The remaining five are elected by registered coconut growers themselves.

The key elements of the CIC Act that may raise anti-competitive concerns are provisions that give the Board exclusive rights to the purchase and re-selling of copra (§15 of the CIC Act). As a consequent of this right, the Board is also given the right to set copra prices (§20(f) and §20(g) of the CIC Act). The latter in itself, however, is not anti-competitive and does not per se contravene the FCA. The question that arises is, given the monopolization of the market, does the Board abuse its dominant position and set excessively low buying prices and high selling prices.

The only buyer of copra from the Board is Seprod Ltd. In reality, the Board is only a virtual middle-person between the copra manufacturers and Seprod. The copra is delivered by the copra manufacturers to the warehouse which is in Seprod's grounds.

Under an agreement brokered by the Ministry of Agriculture between the Board and Seprod, Seprod may, but is not obliged to, buy up to 40 tons of copra from the Board each month. Further, the price that Seprod pays the Board for the copra is tied to the price that it pays for soyabean oil, a substitute for coconut oil. This agreement will expire in October 2003.

Based on this agreement the price received by the Board from Seprod is significantly less than the price that Board pays for the copra.

The analysis suggests that although the Board has exclusive rights to the copra market, there is no anti-competitive effect as a consequence of the exclusivity. This is because of the structure of the industry in which there is a single buyer of copra from the Board and prices are tied to the price of world soyabean oil. Therefore, both the exclusivity and the rights to set copra prices are therefore not in contravention of the FCA.

1. Introduction

The objective of the FCA is to promote fair and healthy competition in the Jamaican economy. Competition lies at the heart of any successful market economy and is crucial to the protection of consumers' interests and the efficient allocation of resources. It is a process whereby firms constantly try to gain an advantage over their rivals and win more business by offering more attractive terms to customers or by developing better products or more effective ways of meeting their requirements. Competition has several dimensions of which price is only one, albeit in many markets the most important. By encouraging the development of new or improved products or processes, it leads to efficient and globally competitive industries. In the long run, this enhances economic growth and living standards in Jamaica as a whole.

In promoting competition, the FCA prohibits agreements and practices that are anti-competitive, i.e., that result in the restriction of competition in any defined market. Two broad categories of prohibited activities are:

- *Agreements that have, or are likely to have, the effect of substantially lessening competition in the market*—this includes resale price maintenance, market sharing and collusion, applying dissimilar conditions to equivalent transactions with other parties and thereby placing them at a competitive disadvantage and bundling¹;
- *Abuse of dominance*— abusive conduct generally falls into one of two categories. First, conduct that exploits customers or suppliers through, for example, excessively high prices or discriminatory prices or other terms and conditions. Second, conduct that is anti-competitive behaviour, sometimes called 'exclusionary behaviour' because it removes or limits competition among existing competitors, or because it prevents new undertakings from entering the market. This second class of behaviour includes predatory behaviour, unfair vertical restraints and the restriction of access to essential facilities. This applies to existing potential as well as existing competitors.

Commodity boards in Jamaica are products of the 1940s and 1950s. The Board, for example, was established in 1945 by the CIC Act and entrusted with the duty to promote the interests of the industry with an emphasis on the welfare of the growers and farmers. The emphasis was also on commodities that were exported. In order to ensure that the small growers and farmers did not get a raw deal in their export markets, commodity boards were set up to centralize exports so that better deals could be found by virtue of larger size. In some cases, the boards were given the exclusive rights to export so that the output of all (small) farmers were aggregated. This was beneficial given the economies of scale in shipping and transport.

In order to enforce these exclusive rights, a host of other measures, such as the exclusive rights to buy from growers and powers to regulate the industry were given to the boards. Effectively, the boards were generally given a monopoly in their respective markets. It is

¹ Bundling refers to the making the conclusion of contracts subject to accepting of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts.

this monopoly power and the potential consequences that may lead to anti-competitive behaviour in the respective markets and that raise concerns from the perspective of the FCA.

The current analysis is carried out in view of the potential conflicts between the FCA and the activities and practices of the Board, as laid out in the CIC Act. The procedure for the analysis is as follows:

- The fundamental question asked is, do the powers and the activities of the Board lead to anti-competitive behaviour that would be prohibited by the FCA? The main sections of the FCA that are applied in this analysis are §17 and §20 (see appendix A).
- If the powers and activities of the Board are found to be anti-competitive, in relation to §17(1) – §17(3) and §20(1) of the FCA, an analysis will be carried out in accordance with §17(4) and 20(2) which in essence allow for the “authorization” of practices that may appear to be anti-competitive but that contribute to the improvement of production or distribution of goods and services and the promotion of technical or economic progress while allowing consumers a fair share of the resulting benefit. With an authorization, an agreement is not considered to be in contravention to the FCA.
- If, however, the analysis suggests that there are no benefits to the consumer from the anti-competitive practice, then the practice would be in contravention of the FCA. In this case, a recommendation would be made to either bring a halt to, or change, the practice in question and amend the corresponding legislation.

The remainder of this paper is organized as follows. In section 2, the key forms of anti-competitive behaviour that may arise in commodity boards are discussed. Section 3 follows with a brief description of the coconut industry while section 4 describes the powers and activities of the Board. Following that, the market structure and production of the Jamaican coconut industry are reviewed in section 5, while price setting behaviour by the Board is analyzed in section 6. In section 7, the relevant powers and activities of the Board are weighed in relation to the FCA. Finally section 8 concludes.

In this analysis, the information on the Board and the Jamaican coconut industry is drawn primarily from a meeting that was held between the staff of the Fair Trading Commission (FTC) and the Board and the annual reports of the Board.² Other sources of information are referenced where applicable.

2. Commodity boards and the FCA

Of the agreements and practices that are prohibited by the FCA, those that are most pertinent to commodity boards are the creation of exclusive rights to markets and the potential for the abuse of their dominant position in the market. Each is discussed below.

² The meeting took place between 2.30 – 4.00pm on September 26, 2001 at the offices of the Coconut Industry Board, 18 Waterloo Road between Swee Chua and Ann-Marie Grant of the FTC and Mr. James Joyles and Mrs. Viveen White of the Coconut Industry Board.

2.1 Exclusivity

Commodity boards are often endowed with monopoly rights to either buy or sell in certain markets. In some cases, no other entity, private or public, is allowed to participate in the market. This would effectively create a monopoly and eliminate competition, which goes against the spirit of free and competitive markets on which the FCA is based. The creation of such dominance could then facilitate certain practices that are considered to be an abuse of dominance.

2.2 Abuse of dominance

A wide range of practices could be considered as abuse of dominance and are therefore prohibited under the FCA. Some that may be of relevance to commodity boards include the following:

- *Unfair pricing*—The commodity boards are often able to set prices at which they would purchase or sell the commodities that pass through their ‘hands’. The ability of the boards to set prices is in itself not anti-competitive.³ The anti-competitive effects may arise if the boards, by virtue of their dominance, are able to set prices that are excessively high (for commodities that they sell) or excessively low (for commodities that they buy). In other words, the dominance of the board allows it to set unfair (monopoly or monopsony) prices.

In most cases, however, the commodity boards are not profit-motivated organizations. They are often created to protect the interest of growers/farmers from whom the board obtains the commodities and on whose behalf the board operates. If there is more than one level in the supply chain in which the board operates, it is normally the interests of farmers and growers that override the interests of other segments of the industry.⁴

- *Discrimination*—another anti-competitive practice would be the unequal treatment of the board’s buyers or sellers on grounds that are not based on economic reasons. In this regard, governance issues, i.e., the interests represented on the board, are important. Board directors with other related interests could lead to discriminatory treatment.
- *Influence in related markets*—if the board is participating in more than one market, it may be able to use its dominance in one market to influence its position in another market. If, for example, a board has exclusive rights to purchase the commodity and

³ Price-setting is sometimes confused with price-fixing, a practice which is prohibited under the FCA. Price fixing refers to competitors colluding to set an agreed price or a dominant undertaking imposing constraints on the prices set by *other* undertakings, normally re-sellers. Independent non-collusive price-setting, however, does not fall into this category of prohibited practices.

⁴ This is not surprising, given that these commodity boards come under the jurisdiction of the Ministry of Agriculture. This feature is also reflected in the composition of the board of directors where there is a stipulated minimum representation from the growers.

if it also participates in manufacturing products using that commodity, along with other private players, it may be able to offer its own manufacturing business better terms than those offered to its competitors. In other words, there could be implicit discrimination or even predation.

- *Unequal access to funding*—The boards’ access to funding could also tip the scale. As government entities, the boards tend to require government approval for loans that they obtain. However, they may also obtain government-backing (guarantees) for their borrowing and this would allow them to borrow on better terms and conditions than their private competitors, if any, would be able to. If there are no private competitors, such conditions could be a deterrent to entry, even if permitted.

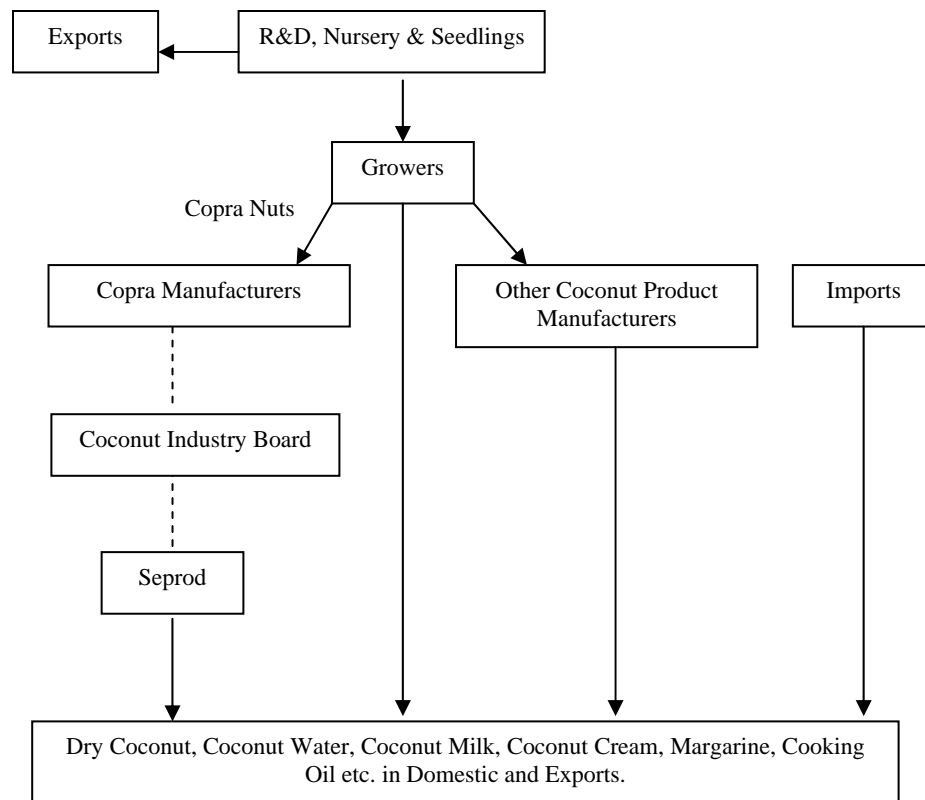
The above are some possible anti-competitive outcomes that could arise out of the commodity boards. The following analysis therefore looks at the factors that would shed light as to whether the powers and practices of the Board, as explicitly laid out in the CIC Act, or implicitly derived through the legislated powers and/or market conditions, are anti-competitive and therefore prohibited under the FCA. This requires studying the powers and activities of the Board, the relevant markets in which the Board participates, price-setting behaviour of the Board and the potential incentives for discriminatory behaviour, which may include the business interests of the board of directors.

3. Supply chain of coconut industry

The Jamaican coconut industry consists of coconut growers, the Board and manufacturers of coconut products. The supply chain of the Jamaican coconut industry is shown in Figure 1. The following briefly describes the activities in the various steps of coconut production in Jamaica:

- *Research and development*—The Board carries out R&D into developing disease-resistant strains of coconuts.
- *Nursery*—the Board runs nurseries and cultivates seedlings from seed coconuts. In general, the seed coconuts are obtained domestically. Only on rare occasions, for example, when the local strains become non-resistant to diseases, are seeds imported. The Board’s role in cultivating seedlings is to ensure that disease-resistant strains are grown.
- *Coconut growing*—Coconut growers harvest both dry and wet coconuts for sale both to the manufacturers of coconut products as well as directly to the retail market.
- *Manufacture of coconut products*—Coconuts are also sold to other coconut product manufacturers, including copra manufacturers, coconut water bottlers, manufacturers of coconut milk and coconut cream, or directly to the retail market.

Figure 1: Supply chain of coconut industry in Jamaica



4. Powers and activities of the Board

The Jamaican coconut industry is governed by three acts:

- *Coconut Industry Aid Act (1932)*—this deals primarily with the powers of the Minister in relation to the licensing of imports of edible oils, control of exports of copra and edible oils, setting of the maximum retail price of edible oils in Jamaica, the imposition of duties on imports and the licensing of manufacturing of coconut products. While the Board may make recommendations to the Minister on certain matters and the Minister may order the Board to carry out certain duties for the purposes of this Act, the Board itself does not have direct power and authority under this Act. In other words, this Act does not afford direct powers to the Board that could in any way lead to independent anti-competitive activities by the Board.
- *Coconut Industry Insurance Act (1949)*—this deals with the provision of insurance. Under this Act, the Board is empowered under regulations made by the Minister to
 - (a) operate schemes for the automatic and contractual insurance of coconut trees by coconut growers against specified risks; and

(b) establish coconut insurance funds for the stated purposes.

There are no provisions, however, that mandate that coconut farmers be ‘statutorily insured’ under this Act. In the absence of such a mandatory requirement, the Board’s insurance scheme is unlikely to offend any provisions of the FCA.

- *Coconut Industry Control Act (1945)*—this Act establishes the Board and sets out its powers and authority. The provisions of this Act may raise anti-competitive concerns in relation to the FCA. The relevant provisions, therefore, are further discussed below.

Given the nature of the former two Acts this analysis will focus on provisions of the CIC Act 1945.

4.1 Governance and powers

The Board is set up as a body corporate with powers to acquire, hold and dispose of land and other properties. It is governed by nine directors, four of whom are appointed by the Ministry of Agriculture. The other five directors are elected by registered coconut growers themselves. The votes of each grower are weighted based on his volume of coconut production that passes through the Board.⁵

Under the CIC Act, the Board may do most things that a body corporate is entitled to do. Amongst other things, the Board may, with the permission of the Minister, do the following:⁶

- Buy, sell and trade in coconuts and coconut products and other such commodities, as it deems fit. It may also export or disposed of coconut products, in any quantity, manner and price as it considers to be in the interests of the coconut industry.
- Process or manufacture coconut products;
- Purchase or hold interests in companies, both those that are involved in the coconut industry as well as those in other industries.

4.2 Powers of the Board

The CIC Act also sets out the powers of Board to *control* the industry. The key powers of the Board that have implications for competition are as follows:

- *Monopoly of the copra market (§15)*—The CIC Act affords monopoly power on copra to the Board in various ways. First, the Board is the only entity that may purchase or sell copra in Jamaica; no one else is allowed to do so. In other words, all copra produced in Jamaica that is purchased or sold has to be done from or to the Board.

⁵ In 2001, there are only eight directors. They are Dr. R.A. Jones (Chairman, nominated), Mr. R.C.O. Chantrielle (nominated), Mr. V. Anderson (nominated), Mr. H.M. Black (elected), Hon. R.E. Thompson (elected), Mr. G.E. Marsh (elected), Mr. J.B. Orrett (elected) and Hon. A.A. Pottinger (elected). Except for Mr. Chantrielle and Mr. Anderson, the others are all coconut growers

⁶ See §14 (“General powers of the Board”) of the Act.

Second, only from stated that everyone using or dealing with any locally produced copra must do so with the consent of the Board and do so subject to any conditions laid down by the Board.

In addition to its monopoly of the copra market, however, the Board is obliged to purchase as much copra as copra makers wish to sell, and sell as much copra as is required by a local manufacturer, at the price prescribed by the Board (see §16 and §17).

- *Regulate the industry*—with the approval of the Minister, the Board may make regulations for the control of the coconut industry and for giving effect to the provisions of the CIC Act. This includes the following (see §20):
 - Licensing of copra makers, coconut exporters and exporters of coconut products, local traders and manufacturers of any of the coconut products set out in the Schedule (i.e. a list annexed to the Act);
 - Providing for the registration of all growers with at least 100 trees;
 - Regulating grades and quality of coconuts and coconut products;
 - Setting prices of almost all coconut products produced in Jamaica including copra. Both the wholesale and retail prices of any product set out in the Schedule may also be set by the Board.⁷ Note that the board also has powers, subject to the approval of the Minister to add or remove any product to or from the Schedule;
 - Policing to ensure that all players adhere to the regulations. This category of controls includes, for example, requiring factories to use copra only for purposes for which copra was purchased, prescribing submissions to be made and records checked.

The extent of the remit is best encapsulated in §20(s) that gives the Board all-encompassing powers to “prescribe all things required to be prescribed”. The Board, however, currently does not use all of the powers which it possesses.

4.3 Activities of the Coconut Industry Board

Currently, the activities of the Board are focussed on the following:

- R&D activities into better coconut strains;
- The sale of seed coconut, including exports;
- The purchase and re-sale of copra.

The Board is the only entity that carries out R&D on coconuts in Jamaica. In terms of seed coconuts, the Board is also the sole Jamaican exporter for seed coconuts to the USA. However, this exclusivity was imposed by the US Food and Drug Administration (FDA) and not by any Jamaican legislation.

⁷ §20(h) contains a clause on regulating the wholesale price of edible oil, while §20(i) refers to the regulation of wholesale *and* retail prices of any product set out in the Schedule. The schedule, however, includes all types of coconut oil and therefore would include edible oil as well, suggesting that retail (if any) prices of edible oil are also regulated in addition to wholesale prices.

In the copra market, the Board has a monopoly in the buying and selling of copra. However, there is only one buyer of copra (Seprod Ltd.) from the Board and the Board acts only as a virtual middle-person between the copra manufacturers and Seprod. The copra is delivered by the copra manufacturers directly to the warehouse, which is on Seprod's grounds. Hence, the Board does not carry out any distribution activity.

Given the uncompetitiveness of Jamaican copra production relative to the other world producers, the Board is attempting to phase out copra production altogether. The Board is focussing on the production of bottled coconut water instead and is trying to improve the shelf life without changing the natural flavour.

There are no activities that the Board outsources to the private sector, i.e., all activities are carried out in-house. This is also true for R&D, although often this is done in collaboration with the universities.

Finally, the Board also imposes a cess on coconut products. Currently, the cess of all coconut products sold in Jamaica is 8 cents per pound of all coconut products.⁸ The cess has stood at this level for a long time (it has not changed over the last decade at least).

5. Market structure and production of the Jamaican coconut industry

5.1 Nursery/seedlings

The Board runs nurseries and distributes seedlings to coconut growers, either at a subsidized price or free of charge. Various programmes have been in place for the distribution of seedlings. Under the Copra Production and Acceleration Programme in the early 1980s, for example, free seedlings, fertilizer and weed control grants were given out to growers. After the 1988 hurricane, the Board gave subsidized seedlings and free fertilizer sufficiently for 60% of seedlings for three years (fertilizer was provided for only 60% of seedlings because 40% of seedlings generally do not survive). In 1999, a new programme was introduced where 60,000 seedlings were given out each year and free fertilizer for 60% of seedlings given out. The limit of 60,000 seedlings was based on the objective of maintaining, not expanding, the coconut farms until new disease-resistant strains are developed. The current strains are no longer disease-resistant.

While there is a small number of private nurseries, the Board does not keep track of their activities. Nonetheless, the majority of seedlings come from the Board.

5.2 Growing

Coconut production in 1999 amounted to 142.8 million nuts. Growing is concentrated in the parishes of St. Thomas, Portland and St. Mary, although a small amount of coconut is grown in other parts of the island. In 1999, there were 222 coconut growers in Jamaica. Growing is, however, somewhat concentrated. The largest grower accounted for 29% of production.⁹ The largest five growers account for 63% of production (see Table 1). Approximately 90% of the smallest producers accounted for only 16% of production.

⁸ See p. 18 of 1999 Annual Report of the Coconut Industry Board.

⁹ See Table III, p. 30 of the 1999 Annual Report of the Coconut Industry Board.

Table 1: Concentration in coconut growing: 1999¹

Growers	Units delivered	% total production
A ¹	6374	29%
B	3083	14%
C	2025	9%
D	1180	5%
E	1035	5%
<i>Total for top-5 growers</i>	<i>13698</i>	<i>63%</i>
<i>Others</i>	<i>8143</i>	<i>37%</i>
Total	21,841	100%

¹ Information is taken primarily from Table III, p. 30 of the 1999 Annual Report of the Board. The breakdown of production of the 1st – 5th largest growers was provided by the BOARD following the meeting on 26th September, 2001.

5.3 Copra manufacturing

In 1999, only a small amount of coconuts (1.5%) went into copra production. This amounted to the production of 303 metric tonnes of copra that year.

Copra manufacturers require a licence from the Board. There are two types of licence – private and commercial. A private licence-holder is allowed to manufacture copra from the coconuts from his farm only. The commercial copra manufacturer is allowed to buy coconuts from other growers. Currently, there are 11 copra manufacturers in Jamaica, of which only 1 holds a commercial licence.

5.4 Copra sales

Currently, all copra manufactured is sold to the Board who is obliged to buy all copra that is supplied to it. The Board then sells it on to manufacturers. The dominant purchaser of copra from the Board is Seprod Ltd, previously a government-owned entity (see Appendix B for a brief description of Seprod). It is now a private listed company, of which the Board is the single largest shareholder (31.6%). The Board, however, does not have a controlling interest in Seprod.

While there are some small companies that manufacture coconut oil in Jamaica, Seprod is by far the largest. Copra is used to make coconut oil, from which products such as soap as well as cooking oil are made. However, as the price of coconut oil has risen (at least in Jamaica), it has been increasingly economical to use substitutes such as soyabean oil instead.

5.5 Trade

There is only a small amount of foreign trade in Jamaican coconuts and coconut products. In terms of exports, some seed coconuts are exported to Florida, Bahamas, Belize and Honduras. Seed coconut exports amounted to 61 metric tons in 1999. There is also some

export of bottled coconut water. Jamaica does not export any copra. In addition, Jamaica does not benefit from any preferential agreements for coconut in terms of market access.

Jamaica imports various coconut products, including coconut milk, cream and oil. These imports incur a tariff: the current CET rate on such products is approximately 20%. Besides that, there are no other import restrictions. Jamaica does not import any copra.

6. Price setting by the Coconut Industry Board

The price of copra nuts and copra is set by the Ministry of Agriculture, based on recommendations of the Board. Further, due to the provisions under the CIC Act, the Board is the sole buyer and seller of copra. This analysis therefore looks at the prices of copra nuts paid to growers, prices of copra paid to copra manufacturers and prices of copra paid to the Board. The objective is to determine if the prices at which copra is sold could in way be excessively high, and if the prices that suppliers of copra nuts and copra manufacturers are paid are excessively low. Each is discussed in the following.

6.1 Prices for copra nuts

As noted above, the price of copra nuts and copra is set by the Ministry of Agriculture, based on recommendations of the Board. Currently, copra nuts are priced at J\$180.45 per unit (155 pounds). Each unit is about 125 nuts. This translates to a price of about J\$1.50 per nut.

The staff of the Commission was informed that the price of copra nuts is set based on a mark-up over estimated costs. In the case of copra nuts, factors that are taken into account in the estimates include planting and reaping costs. According to the Board, a mark-up of 20% over cost is allowed for copra nuts.

The price that growers receive for copra nuts is significantly lower than the prices that they receive for selling nuts for other purposes. A comparison of alternative prices is provided in the Table 2.

Table 2: Comparison of coconut prices

Type of nuts	Approximate price per nut
Jelly coconuts ¹	J\$12.00
Seed coconuts ¹	J\$12.50
Dry coconuts (not for copra) ²	J\$10.00 - 12.00
Copra nuts ¹	J\$1.50

¹ These prices were provided during the meeting 26th September; ² These prices were quoted in the 1999 Annual report, p. 8.

6.2 Prices for copra

This current price was set in 1998, the last time the price was adjusted. Similar to copra nuts, the price that the Board pays for copra is set by the Ministry of Agriculture, based

on recommendations of the Board. The price of copra nuts is also set based on a mark-up over estimated costs, where currently a mark-up of 20% over cost is allowed. Copra currently is priced at J\$14,500 per metric ton. This compares to a world price of copra as low as J\$7320 from Indonesia (see Appendix C for information on world prices on coconut products and substitutes).

Under an agreement brokered by the Ministry of Agriculture between the Board and Seprod, Seprod may, but is not obliged to, buy up to 40 tons of copra from the Board each month. This sets the maximum, but not minimum, that Seprod buys. Currently, sales of copra to Seprod are a little below that limit at about 36 tons. Further, the price that Seprod pays the Board for the copra is tied to the price that it pays for soyabean oil, a substitute for coconut oil. This agreement will expire in October 2003.

Based on this agreement and the price offered by the Board to copra manufacturers (based on a mark-up over cost), the price received by the Board from Seprod is significantly less than the price that the Board pays for the copra. In 1999, the difference amounted to a subsidy to copra manufacturers of approximately \$11,000 on each metric ton of copra that the Board purchased and sold to Seprod.¹⁰

7. The Coconut Industry Board and the Fair Competition Act

This section analyses the relevant provisions of the CIC Act in relation to the FCA. Specifically, §15, §16, §17 and §20 are discussed. Sections that are not discussed may be assumed to be consistent with the FCA, i.e., not in contravention of the FCA.

Each of the sections discussed is analyzed with regard to whether or not it has or is likely to have the effect of substantial lessening of competition in the market. If so, the assessment considers if the practice contributes to the improvement of production or distribution of goods or services, or the promotion of technical or economic progress (see §17(4) and §20(2) of the FCA).

Whether or not a practice or section is in contravention of the FCA depends primarily on two factors. First, it depends on whether the Board has exclusive rights and access to certain markets, both directly and indirectly, leading to a position of dominance in the relevant market. Following that, the second factor is whether or not the Board abuses the dominance. This can occur in several ways, several of which were outlined in section 2 of this paper.

7.1 Determination of price offered to growers (§20(f) and §20(g))

According to §20(f) and §20(g), respectively, the Board may, with the approval of the Minister, make regulations—

- prescribing the price to be paid by the Board for copra purchased by them; and
- prescribing the price to be charged by the Board for copra supplied by them to manufacturers of coconut products.

¹⁰ See p. 8 of 1999 Annual Report of the Coconut Industry Board.

The ability of the Board to determine the price at which it buys or sells copra is not, in itself, a breach of the FCA. It becomes problematic from the perspective of the FCA only if:

- the undertaking is dominant; and
- the undertaking abuses its dominant position by either charging excessive prices (in the case of a dominant, monopolist supplier) or offering unreasonably low prices (in the case of a dominant, monopsonist buyer).

Both these factors together could constitute an abuse of dominance under the FCA. Nonetheless, the ability to set prices per se is not prohibited under the FCA. The question then arises, does the Board appear to have, and to abuse, either the monopoly or monopsony powers that its exclusive rights in the copra market afford it?

In terms of its monopoly power, the Board is not able to charge excessively high prices for copra due to the agreement that the price of copra sold to Seprod be tied to the price of soyabean oil. As the price of soyabean oil is set in the competitive world market, there is no avenue in this case for abuse of dominance by the Board. Further, Seprod itself, as dominant buyer of copra from the Board, has equivalent market power to ensure that it is not excessively charged. The availability of cheaper substitutes for coconut oil also puts downward pressure on prices that the Board sets.

In terms of its monopsony power, there is no evidence of the Board offering excessively low prices to copra manufacturers. On the contrary, the Board is potentially offering prices that are too high, as evidenced by the fact that the price at which the Board buys the copra is higher than the price at which it is able to sell, by a margin of about 50%. The key reason as to why the Board does not and is unlikely to set excessively low prices for the copra manufacturers stems from:

- the objective of the Board—which is to protect the interests of the growers; and
- the composition of the Directorship—which predominantly represents the growers.

Since the copra manufacturers are also (large) coconut growers, the interests of the copra manufacturers are also ‘protected’. In other words, the exclusive arrangement has not led to anti-competitive behaviour by the Board in the copra market.

7.2 Monopolization of the copra market (§15, §16 and §17)

Under §15 of the CIC Act, “no person—

- (a) shall purchase from or sell to any person other than the Board any copra made or produced in the Island;
- (b) other than the Board shall export any copra made or produced in the Island;
- (c) shall use, consume or otherwise deal with any such copra as aforesaid except with the consent of the Board, and subject to such conditions as the Board may determine.

Any person contravening the provisions of this sub-section shall be guilty of an offence and shall, upon summary conviction before a Resident Magistrate, be liable to a fine not exceeding four hundred dollars and in default of payment to imprisonment for any period not exceeding six months.”

Further, §16 says that:

“The Board shall, upon being required so to do by the owner of any marketable copra, purchase such copra at the prescribed price”.

Similarly, under §17:

“The Board shall, upon being required so to do by a local manufacturer sell copra to such manufacturer at the prescribed prices in such proportions and quantities as may from time to time be prescribed”.

Essentially, these provisions give the Board exclusivity in the copra market. This, however, has not led to a “significant lessening of competition” given the structure of the industry where there is a single buyer of copra and where the price of copra is indexed to the world price of soyabean oil. In other words, the exclusivity has not led to excessively high prices for copra sold by the Board or excessively low prices paid to copra manufacturers (see section 2). However, the problem here appears to be one of *excessively high prices paid to copra manufacturers* in relation to the market price of copra. This is evidenced by the fact that the prices paid to copra manufacturers are higher than the price that the Board receives for the copra.

It is worthwhile noting, however, that the copra manufacturers are the primary beneficiaries of this subsidy, the consequence of which is a cost to the Board to the tune of approximately J\$3.3 million for 1999.¹¹ If not for this cost, other beneficial activities of the Board, such as R&D activities, could have received additional funds. In 1999, for example, J\$13.4 million was spent on Research and Extension activities. If, instead of paying prices above market value to copra manufacturers, funds were channeled to such research activities, there would have been about 25% increase in research activity for that year.

8. Summary

The Board has exclusive rights to the copra market. However, given the structure of the industry in which there is a single buyer of copra from the Board and prices are tied to world soyabean oil, there is no anti-competitive effect as a consequence of the exclusivity. It is therefore not in contravention of the FCA.

Finally, we turn to a broader question of the effectiveness of commodity boards, including but not limited to the coconut industry, in promoting the efficiency of the industry concerned. This question arises based on the observation that industries that have been under the umbrage of a commodity board have, in general, shown rather weak results.

¹¹ This figure is based on the estimated subsidy of J\$11,000 per ton of copra and production of 303 tonnes of copra for that year.

There are various possible explanations for this decline, including poor macroeconomic conditions and the lack of growth prospects for agricultural commodities in general, competitive pressures from other countries where the cost of production, including labour, is significantly lower. The latter, however, still begs the question, why?

While there is likely to be more than one valid explanation for the downward trend in these sectors, one possibility should not be discounted. The organization of the sectors around commodity boards that possess a high degree of market power and lack a clear profit-incentive is a strong correlating factor in each of these cases. The role and importance of profits in driving efficiencies and productivity-increasing innovations, both technical and managerial, should not be underestimated.

Further, the emphasis on the interests of the growers may, in the long run, not be in the interests of the industry as a whole. Maximizing the price paid to growers, for example, may lead to high production costs and the loss of competitiveness in the export markets. Further, the protection of small growers may limit the consolidation in growing and the increases in the scale of production (moving from small to large farms) that is required to stay competitive in agriculture. All these could lead to a shrinkage of the sector, which eventually is detrimental to the growers, themselves. The viability of the boards' activities may finally require some form of government subsidies, directly or indirectly. The cost to taxpayers could be high.

It may be that the situation cannot be reversed without injecting a clear profit-incentive into the sector. In other words, consideration should be given to the liberalizing and privatizing of these sectors. While not all of the functions of the boards should be subject to liberalization, many would be amenable to that change. If carried out in a timely and carefully structured manner, it would be possible to jump-start these declining sectors. In view of this, a thoughtful and thorough analysis of the following issues is recommended:

- the role, structure and impact of commodity boards;
- the advantages of increasing competition where possible; this may require some degree of privatization. If anything is privatized, it should be done carefully, with reference to the privatization experiences in other countries;

If the analysis indicates that liberalization would be beneficial, much can be learnt on the process of liberalization from the experiences in other countries. If carried out in a way that promotes competition, the benefits in terms of increased efficiency and earnings, both to the sectors and to Jamaica, could be substantial.

Appendix A: Sections 17 and 20 of the FCA

A.1 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.”

A.2 Section 20 of the FCA

20— (1) An enterprise abuses a dominant position if it impedes the maintenance or development or effective competition in a market and in particular but without prejudice to the generality of the foregoing, if it—

- (a) restricts the entry of any person into that or any other market;
- (b) prevents or deters any person from engaging in competitive conduct in that or any other market;
- (c) eliminates or removes any person from that or any other market;
- (d) directly or indirectly imposes unfair purchase or selling prices or other uncompetitive practices;
- (e) limits production of goods or services to the prejudice of consumers;
- (f) makes the conclusion of agreements subject to acceptance by other parties of supplementary obligations which by their nature, or according to commercial usage, have no connection with the subject of such agreements.

(2) An enterprise shall not be treated as abusing a dominant position—

- (a) if it is shown that—
 - (i) its behavior was exclusively directed to...promoting technical or economic progress; and
 - (ii) consumers were allowed a fair share of the resulting benefit ;
- (b) by reason only that the enterprise enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trade mark.

Appendix B: Seprod Ltd.

Seprod Ltd. was incorporated in Jamaica in July 1940 and became a public company listed on the Jamaica Stock Exchange in 1985. Seprod is a group of companies that operates in the food-manufacturing and distribution sector. The group is involved in the manufacture and distribution of oil-based products.

As of December 2000, the wholly owned and associated companies of Seprod were:

- *Subsidiaries*—Caribbean Products Company Limited, Industrial Sales Limited, Jamaica Detergents Limited, Jamaica Feeds Limited, Jamaica Grain and Cereals Limited, Coper Limited, Jamaica Household Products Limited and Jamaica Edible Oils & Fats Company Limited.
- *Associated Companies*—North Coast Milling Limited, (50%) and Facey Commodity Company Limited, (48.5%).

The largest shareholder of Seprod Limited is the Board that has a 31.6% shareholding interest. Next in line is Musson (Jamaica) Limited with a 21.3% interest.

Mr. Desmond Blades is the current Chairman of Seprod Limited and Mr. Byron Thompson is the Chief Executive Officer and Group Managing Director. There is a level of inter-directorship between Seprod Limited and the Board. At December 2000 both boards shared two directors: Hon. Byron E. Thompson and Mr. Horace Black.

Seprod paid cess of \$3,150,000 and \$3,910,000 in 1999 and 2000 respectively, based on the sales of copra based and substitute products, to the Board.

Some of the brands produced and distributed by the group include:

- Chef Oil (soyabean oil and palm oil), Gourmet Oil (100% soyabean oil), Puritan Oil (100% coconut oil), Kriss (100% corn oil) Chiffon, Buttercup, Gold Seal Margarines and Clover;
- Daffodil and Golden Grain—cornmeal
- Miracle—vinegar, baked beans, rice, soy sauce, whole kernel corn.

Appendix C: World prices of coconut products and coconut substitutes

Product	Country	Prices (Jamaican dollars equivalent)/per metric ton ¹	
		June 2000	June 2001
<i>Copra</i>	Philippines	\$8,929.41	\$6,670.81
	Indonesia	\$7,320.61	\$7,494.72
	India	\$20,576.35	\$21,791.79
<i>Coconut oil</i>	Philippines	\$11,620.12	\$14,202.37
	Indonesia	\$11,574.48	\$11,989.96
	Sri Lanka	\$27,354.11	\$23,251.00
	India	\$31,103.78	\$30,874.10
<i>Desiccated coconut</i>	Philippines	\$29,745.00	\$44,955.00
	Sri Lanka	\$22,629.31	\$21,614.00
<i>Others</i>			
Palm kernel oil		\$14,175.00	\$19,620.00
Palm oil		\$11,475.00	\$14,175.00
Soybean oil		\$14,715.00	\$14,760.00
Sunflower oil		\$19,935.00	\$17,910.00

¹ An exchange rate of US\$1 to J\$45 was applied.