



Competition in Agriculture

Does it bear good fruit?



FTC consults on merger review and control framework

Cultivating Competition Law & Policy: Is the climate right for agriculture?

Is Cane Sugar Still Relevant in the Global Market?

Nature's Energy Food

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Compete

Foreword

In this 22nd issue of **Compete**, we explore the theme "Competition in agriculture: Does it bear good fruit?" which highlights the various opportunities and challenges for competition and economic development in the agricultural sector. Sustained economic growth provides the basis for improved standard of living and competition is generally accepted as the best mechanism to efficiently organize the productive resources of the economy and therefore stimulate economic growth.

The agricultural sector is important to the Jamaican economy as in 2016, it contributed 7.3 percent to Jamaica's GDP, up from 6.6 percent in 2015. Jamaica also earns foreign exchange revenue from the agricultural sector through the export of traditional and non-traditional crops. In 2016, export earnings from traditional agricultural products totaled US\$33,000,000 compared to US\$27,500,000 in 2015.

While the sector has experienced growth, it has certain vulnerabilities as it is negatively impacted by crop diseases and weather extremes of drought and heavy rainfall. Albeit these vulnerabilities, since 2016, attention has been focused on the potential of the agricultural sector to transform Jamaica's economy. It is within this context that the theme was developed and explored.

The articles therefore touch on several broad topics including, 'Cultivating competition law and policy-is the climate right for agriculture?' and 'The farmer or the consumer: who should benefit from competition in agriculture?'. The viability of and strides made in the sugar and coconut industries are also discussed. Looking at the use of new powerful technologies in transforming economies, included is an article exploring the importance of smart farming to sustainable growth of the sector.

We have also included articles on the implication of the August 2017 Privy Council ruling on FTC's jurisdiction in investigating mergers. The magazine highlights some of the matters we have explored in 2017.

We know you will enjoy this issue of **Compete** as much as we enjoyed putting it together.

Happy reading!

Kristina Barrett-Harrison
Chairperson, Magazine Committee

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Mergers & Acquisitions in 2017

Hanover Cooperative Credit Union and Montego Cooperative Credit Union merged to form Gateway Cooperative Credit Union Limited. The merged entity, which operates in western Jamaica, boasts membership of 70,000 and total assets of JA\$6.1 billion.

www.dcf.gov.jm

Access Financial Services Limited, a micro-loan lending company, acquired for JA\$80 million the loan portfolio, fixed assets and trade name of rival company, Micro Credit Limited. This is the second acquisition in 2017 for AFSL. Earlier in the year it acquired Damark Limited for JA\$180 million.

www.jamaica-gleaner.com

GraceKennedy Limited, a major food manufacturer and distributor acquired 100 percent ownership of Consumer Brands Limited, a significant player in the distribution of non-food item. GraceKennedy Group which operates eight stores in the Hi-Lo Supermarket chain will as a result of the acquisition distribute the Procter & Gamble line of products in addition to products for ten other international and local principals.

www.jamstockex.com

www.gracekennedy.com

LASCO Financial Services Limited, a cambio and remittance services company, acquired Scotia Jamaica Micro Finance Company Limited which trades as CrediScotia. CrediScotia, a wholly owned subsidiary of Scotia Group Jamaica Limited, entered the microfinance sector in November 2011.

www.jamstockex.com

FTC consults on merger review and control framework

Pursuant to Cabinet Decision No 2/15 dated January 2015, a Ministerial Subcommittee was established to oversee the creation of an effective framework for reviewing mergers and acquisitions in Jamaica. This initiative, which falls within the Foundations for Competitiveness and Growth Project (FCGP) and is financed by a World Bank loan, includes the drafting of legislation and regulations to enable the amendment of the Fair Competition Act (FCA) as well as conducting training of key stakeholders. The initiatives under the FCGP are expected to strengthen the enabling environment for private sector competitiveness to help Jamaica unleash its potential for productivity and growth.

The consultant Menns SPRL (Belgium) in consortium with LEAR Lab S.R.L. (Italy) was selected to develop the framework and to draft the required provisions. The consultancy commenced on September 25, 2017 and is scheduled to end on March 30, 2018. The Planning Institute of Jamaica together with the Fair Trading Commission (FTC) and the Ministry of Industry Commerce Agriculture & Fisheries will oversee the work of the consultant.

Merger Review is one of the three pillars of competition law and the objective of examining proposed mergers is to prevent those which may be inimical to the functioning of a competitive market process. It is widely accepted that competition law is substantially less effective at protecting the competitive process without a merger review framework.

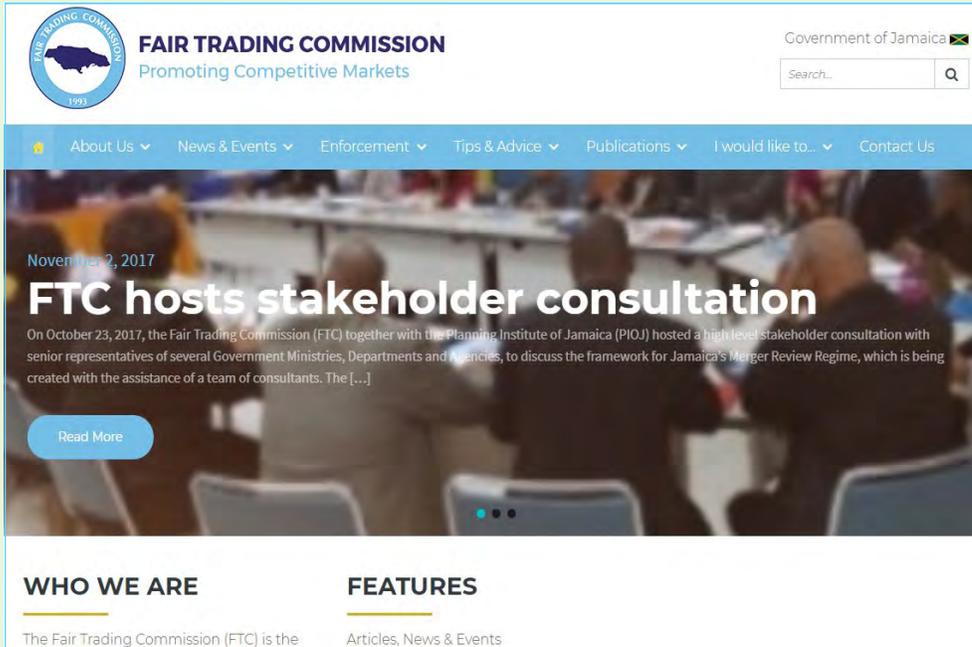
Merger review is therefore an indispensable tool for the effective enforcement of competition law and Jamaica should benefit from including the relevant provisions in the FCA.

The ultimate objective of the consultancy is an amended legislation to introduce a comprehensive and effective merger review framework as part of the current FCA which presently does not include provisions that speak directly to a merger review and control framework. This project will effectively address the challenge of defining appropriate procedural, institutional and substantive review rules and remedies to particular mergers.

The inception mission of the consultancy included a high level stakeholder consultation with senior representatives of several Government Ministries, Departments and Agencies, to discuss the possible framework for, and features of, Jamaica's Merger Review Regime.

Fourteen Ministries, Departments and Agencies participated in the discussions, including the Ministry of Industry Investment Agriculture & Fisheries, the Ministry of Economic Growth & Job Creation, the Ministry of Justice, the Ministry of Science, Energy & Technology, the Ministry of Transport & Mining, the Attorney General's Department, the Bank of Jamaica, the Consumer Affairs Commission, the Financial Services Commission, JAMPRO, the Office of the Chief Parliamentary Counsel and the Office of Utilities Regulation.

FTC launches redesigned website



In November 2017, the FTC's newly redesigned website went live. With a more contemporary, structured and cleaner look, the website offers users ease of navigation to access its rich source of information on the work of the FTC. The restyled home page, with four distinct sections, is simpler, more inviting and offers users a better experience.

A seven-tab navigation bar houses menu items on the role, structure and Commissioners of the FTC; legislation, judgments and consent agreements; as well as the FTC's publications. Also included on the navigation bar is the "I would like to" prompt that allows users to submit a complaint or request information, while viewing the latest posts on the right rail.

This redesign is the start of a process of continuous upgrades and improvements to add new functionalities ultimately for the optimal delivery of information on competition law activities, enforcement and developments and an overall greater experience for our users.

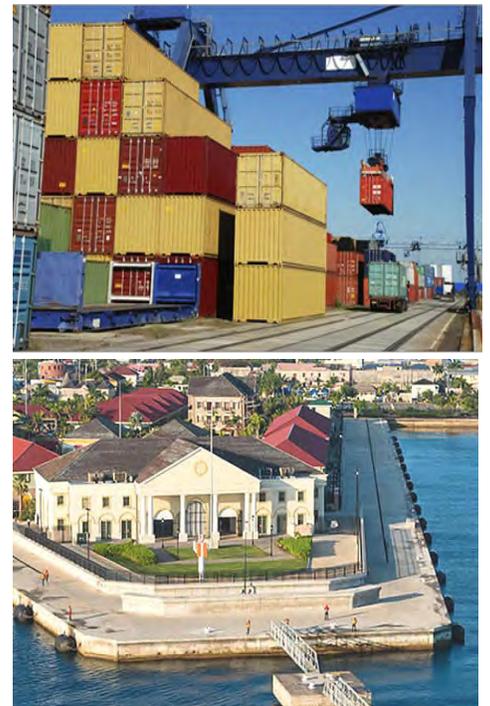
Industry study

In August 2017, the FTC initiated a study of the port services industry in Jamaica, the efficient operation of which is critical for establishment and development of Special Economic Zones (SEZs). Some of the services offered by players in the port services industry are container handling; haulage; warehousing and terminal operation, while regulatory oversight is provided primarily by the Port Authority of Jamaica.

SEZs are touted as being crucial to raise the competitiveness of the Jamaican economy. Critical to the achievement of this goal is the support system of efficient and effective legislation. Some of the main goals of the SEZs are: wide-scale economic activities in new and emerging sectors; sustainable linkages between businesses; and harmonization of fiscal incentives.

The main objective of the study is to propose a framework for the port services industry that would be best to facilitate sustained growth in the wider local economy, in light of the proposed policies to position Jamaica as a significant node in global logistics. In particular the study focuses on the assessment of potential impediments to competition posed by the existing structure and characteristics of the industry; and accordingly, the study will use best practices to propose measures to mitigate the main issues identified, if any.

The final Report of the study is scheduled to be released to the public no later than March 2018, following consultation with stakeholders including regulatory bodies, Ministries and Agencies as well as Jamaica Special Economic Zone Authority.



FTC reaches out

Executive Director, Mr. David Miller, participated in a Press Briefing hosted by the Consumer Affairs Commission to provide guidance and information to consumers as they ventured out to shop for the holiday period.

In his message, Mr. Miller urged consumers to be vigilant, compare prices and to pay close attention to the terms and conditions of sales. He also used the platform to inform merchants of their responsibilities under the Fair Competition Act; in particular to provide at all times unambiguous and material information to consumers to allow them to make informed shopping decisions.

Under the theme "The Quest for Growth: Competition and Industrial Policy, Complementary or Estranged Bedfellows", the FTC hosted the 17th lecture in its Shirley Playfair Lecture Series. The lecture was delivered by Dr. Peter-John Gordon, former FTC Chairman and current Lecturer in the Department of Economics at the University of the West Indies.

Dr. Gordon argued that the path to the fastest rate of economic growth is competition policy, which does not favour any particular sector. He claimed that this is vastly superior to industrial policy, in which policy makers try to identify the sectors that will be the winners in the future. Under competition policy each business takes commercial risks as to what consumers will demand in the future. Under industrial policy the government anticipates future consumer demand and designs policies to steer businesses towards particular sectors. He argued that competition policy is likely to produce better outcomes than industrial policy because private businesses have greater incentives and opportunities to correctly anticipate the demands of consumers in the future.

TRAINING OPPORTUNITIES

The Staff of the FTC continues to benefit from much appreciated and extremely useful training opportunities. During 2017, Miss Wendy Duncan, Legal Officer and Miss Verlis Morris, Competition Analyst successfully completed an in-depth ten-weeks post graduate course in Competition Law and the Economics of Competition through the Sir Shridath Ramphal Centre for Trade Policy and Law, University of the West Indies. The course, delivered on-line, was part of the CARIFORUM-EU Capacity Building Project in Competition and covered areas such as the economics of competition, merger control regulation as well as using in court economic evidence which is an essential element of a successful competition case.

Miss Duncan also participated in the US Federal Trade Commission-hosted International Competition Network (ICN) Merger Working Group workshop on the practical tools needed to plan and conduct merger investigations, while Mrs. Kristina Barrett-Harrison, Research Officer, participated in a similar workshop on effective investigative techniques in merger analyses. This training-style workshop hosted by the Mexican Federal Economic Competition Commission was held in December.

In another ICN facilitated workshop, hosted by the Italian Competition Authority, Miss Ann-Marie Grant, General Manager, benefited from presentations and hypothetical cases on the challenges and policy considerations in enforcing competition law in the digital era. By noting the global enforcement experience in the digital economy, the workshop focused on the suitability of existing antitrust tools to define markets and assess market power; timing and

risks of intervention and the identification of appropriate remedies. Also included in the discussions was the importance of international cooperation, coordination and the sharing of experience.

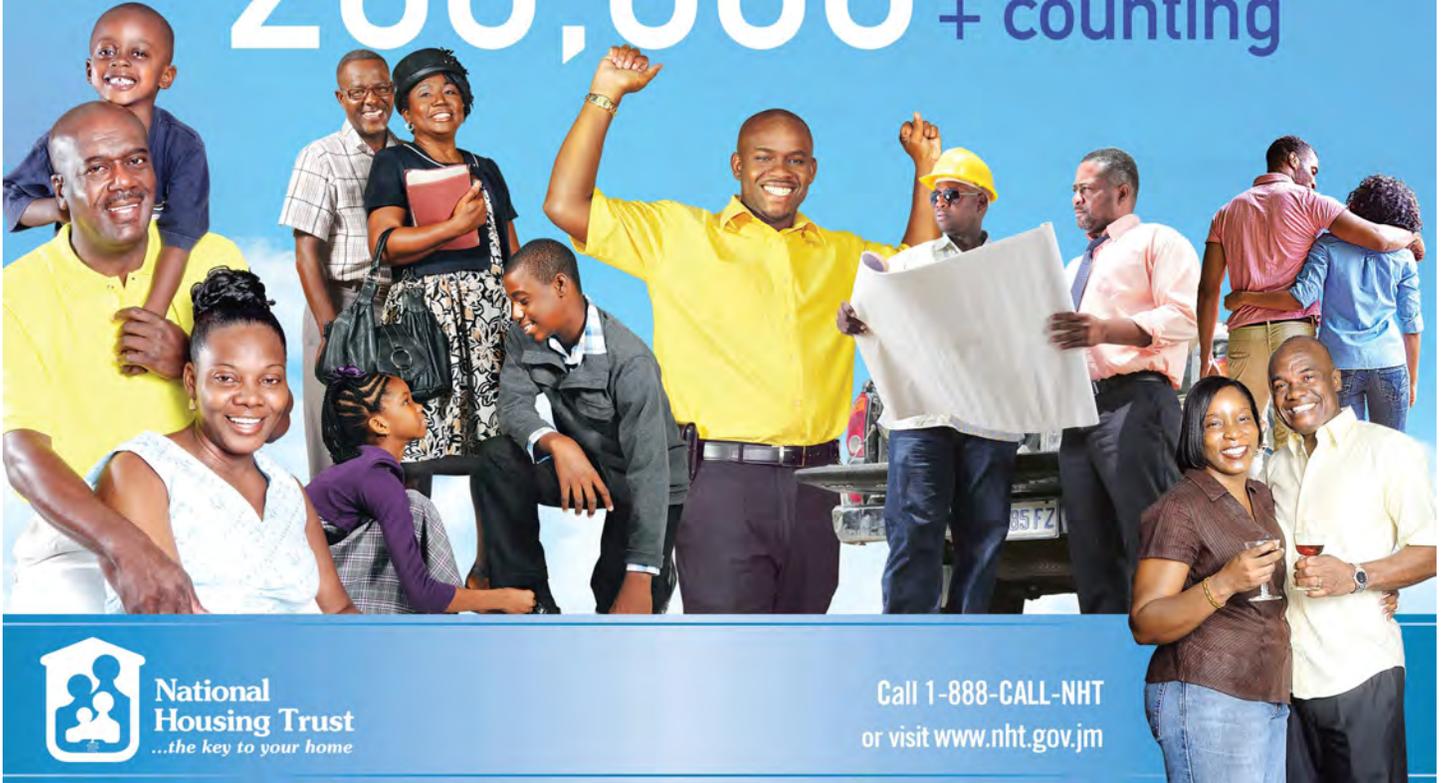
The FTC also participated in the 7th Annual Meeting of the Working Group on Trade and Competition of Latin America and the Caribbean. With the focus on trade and competition in the era of the digitized economy in Latin American and the Caribbean, the meeting was hosted by the Superintendency of Competition of El Salvador. Miss Morris, in representing the FTC, presented on the area of net neutrality, the principle relating to the same treatment of all data on the Internet irrespective of user, content, website or application.

Miss Morris gained important insights from discussions on the digital economy from the perspective of competition and trade. The meeting discussed the opportunities and challenges for regional integration mechanisms in the field of digital economy as well as the treatment of non-tariff barriers and their impact on competition.

These opportunities follow on an extensive 'training of trainers' workshop held in 2015 in which four members of Staff participated and are now certified to conduct training sessions in competition law within CARIFORUM countries as part of the capacity building initiative under the programme funded by the 10th European Development Fund.

Training alongside more experienced competition authorities presents a unique opportunity for the Staff of the FTC to build their capacity to confront potential threats to competition.

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FTC v. Digicel Jamaica Limited & Another

Dr. Delroy S. Beckford, Senior Legal Counsel, suggests the way forward for merger review in Jamaica

The recent decision of the Privy Council in *FTC v. Digicel Jamaica Limited & Another*¹ has now confirmed the merger jurisdiction of the Fair Trading Commission in respect of agreements under section 17 of the Fair Competition Act and regardless of whether sector specific legislation has specific merger provisions to govern transactions under their legislative scheme.

This very basic question could not be the basis of any litigation before any court in a jurisdiction with a mature competition authority, an established competition culture, a developed intellectual tradition recognizing competition law as a legitimate body of law in and of itself, and a competent judiciary comfortable with the nuances and epistemology of competition law.

That though is the experience of competition authorities in developing countries in their early years of existence: the first round of battle being usually around jurisdiction since the legal skills of defence counsel in such jurisdictions are often limited to that body of knowledge.

This approach will of course be found wanting eventually since the legislation must have been passed for a reason, unless there is a presumption that Parliament is a body not committed to its actions in promulgating legislation.

Now that the jurisdiction question is behind us, the issue of effective merger control becomes paramount. The Privy Council decision does not say how this is to be done; rather the FTC is given broad powers to carry out this process, even without specific pre-merger notification provisions being in place as exists in some jurisdiction such as the European Union.

To be sure, a few preliminaries are to be addressed as discussed below.

Design of the remedy

The design of merger remedies depends broadly on the nature of the economy for which such remedies are to apply. Developed countries, depending on their economy, may require different remedies than developing countries because of factors such as the size of the economy, the strength of

informal arrangements for the conduct of business, and the type of industries to be regulated.²

Remedies may also depend on multilateral or regional obligations to be met. Multilateral obligations (for example, obligations in the World Trade Organisation (WTO)³) typically require non-discrimination in the design and application of laws, regulations and other measures, and transparency; whilst regional obligations typically require harmonization of laws and regulations, in addition to non-discrimination and transparency requirements.

General principles for effective merger remedies

Three main principles have been advanced for effective merger remedies, namely they must be formulated in a non-ambiguous way, control of implementation must be easy, and they must alleviate the lowest possible social cost and competition concerns identified.⁴

These principles implicate the choice of the remedy and the stage at which the remedy is to be implemented. The choice of the remedy may be structural or behavioural or a combination of both, and the stage of implementation may be *ex-ante* or *ex-post*.⁵

Structural remedies (such as asset divestiture) are generally one-off remedies that intend to restore or maintain the competitive structure of the market. Behavioural remedies are normally ongoing remedies that are designed to modify or constrain the behaviour of merging firms (in some jurisdictions, behavioural remedies are normally referred to as



“conduct remedies”). Some remedies, such as those relating to access to intellectual property rights, are particularly difficult to categorise on this basis. However, an effective package of remedies may contain both structural and behavioural elements.

Structural remedies are expected to reduce post-merger administrative costs in policing abusive conduct and, in the case of asset divestiture, provides a once and for all remedy that does not require long term supervision.

Employing injunctive relief in merger control

One of the procedural enforcement remedies in the FCA is injunctive relief. A competition agency may wish to obtain injunctive relief to block a merger whereby notification requirements are not met by the merging parties for the agreement to be examined and for a determination by the competition agency as to whether the merger should be authorized and if so upon what terms and conditions to ensure that its possible anti-competitive effects, if any, are reduced or eliminated.

The availability of this relief typically involves the giving of an undertaking in damages by the party filing suit in the event that the suit brought by a party, or the party seeking to enforce a statutory provision, is unsuccessful and damages result to the party against whom the injunction is obtained.⁶

If the suit by the competition agency grounding the application for injunctive relief is primarily based on the breach of a statutory obligation, namely the failure to notify the competition agency, this may present no issue regarding an undertaking for damages to the extent that there may be little, if any, dispute, as to whether there is a breach of the statutory obligation to notify. Disputes may arise, however, as to when the obligation to notify arises and whether the application for injunctive relief is premature.

Since the promulgation of the **Crown Proceedings Act, 1947**, for example, it has been held that the former rule or practice whereby the Crown was not required to give an undertaking in damages as a condition of being granted an interim injunction is no longer applicable,⁷ although it is less likely that a court will require such an undertaking from the Crown where it seeks to enforce the law.⁸

The Crown typically, therefore, would not necessarily be required to provide such an undertaking whereby the Crown seeks injunctive relief to enforce a statutory provision. However, not all government agencies are regarded as a representative of or as being synonymous with the Crown to be accorded this benefit.

Section 2 of the Crown proceedings Act 1947 defines the term Crown as '*Her Majesty in right of her government in the island*.' Whether a statutory body is to be deemed a servant or agent of the Crown entitled to the immunities and privileges of the Crown depends on the degree of control exercised by the Crown through its Minister in the performance of the

duties of the relevant statutory body.⁹

Where a Minister appoints members of a corporation or statutory body and gives directions of a general nature this does not make the corporation or statutory body an agent of the Crown.¹⁰

Moreover, where a statutory body carries out its duties largely without reference to the relevant Minister and can sue or be sued in its corporate name, it has been held that the ability of the statutory body to so act does not entitle it to the privileges and immunities of the Crown.¹¹

The FTC, in particular, would not be regarded as an agent of the Crown to derive from this benefit given the provisions of the FCA whereby the relevant Minister gives directions of a general nature and the FTC can sue and be sued in its corporate name.

Nonetheless, it would still benefit from the exemption given to the Crown in certain circumstances if its application for injunctive relief is for the enforcement of a statutory obligation.¹²

Competition concerns raised by the merger

The remedy chosen should be flexible to accommodate the various competition concerns which can arise from a merger. Potential post-merger collusive conduct suggests the need for post-merger behavioural remedies if structural remedies would be inadequate, but this must be balanced against post-merger monitoring costs by the competition agency. So too would be the case regarding post-merger abuse of dominance.

In the latter case much depends on the goal of pre-merger review. Should the goal be the prevention of a post-merger monopoly as is the case in some jurisdictions or prevention of anti-competitive conduct? The former goal seeks to preempt anti-competitive conduct by blocking mergers that can lead to abuse thereby relying, generally, on ex ante structural remedies whilst the latter permits the merger by relying on post-merger behavioral remedies.

The remedy chosen, however, may include both structural and behavioural in any given case whether the goal of pre-merger review is the prevention of a post merger monopoly or prevention of anti-competitive conduct.

Implementation of the remedy

The type of remedy contemplated should also specifically exclude or state clearly when the general remedies available for breach are applicable to ensure that the applicable remedy for breach of merger provisions are enforced without disputes as to which provision is to govern.¹³ For example, section 47 of the FCA provides for general pecuniary and other remedies in the event of a breach of any of the prohibitions in the FCA, but the particular pecuniary penalty in the event of a breach of a merger provision may be different. In the later case, the pecuniary penalty may be a fixed sum or a percentage of annual turnover¹⁴ and this remedy must be stated clearly as



review by a court if the decision of the FTC is found wanting in any significant respect as it relates to a determination that it makes.

There is not in existence any specific threshold for reporting a merger for consideration of likely competitive effects. This means all mergers are potentially reportable since the FTC may examine a transaction that was not reported but may likely have anti-competitive effects.

Importantly, a determination that a merger is to be blocked, to be cleared with conditions, or to be cleared without conditions are determinations which are subject to review, the latter determinations challengeable not just by the parties to the transaction but also interested third parties who may view the merger as likely to impact them negatively whereby competition and/or public interest criteria are to be factored into the decision making process.

Concluding remarks

The foregoing represents some preliminary considerations regarding merger control in light of the recent Privy Council's decision in *FTC v.*

the applicable remedy in the event of a breach of the merger provision.

Judicial review

This power is far from absolute. Its exercise is subject to

Digicel Jamaica Limited & Another. The task ahead has just begun and it is to be expected that a seamless system is to be implemented and enforced consistent with the provisions of the FCA which is now recognized as the governing merger legislation for industries.

Endnotes

¹ [2017] UKPC 28

² The term 'regulated' is used in a broad sense to include *ex ante* and *ex-post* competition provisions and not necessarily to distinguish between regulation and competition whereby the former refers to sector specific regulation of industries and the latter to competition legislation to monitor and remedy anti-competitive conduct.

³ There is no WTO obligation for countries to enact competition laws. However, laws enacted must satisfy core obligations such as MFN and national treatment. See, for example, *US-1916 Act*.

⁴ See, for example, Frederic Jenny, 'Design and Implementation of Merger Remedies' *International Merger Control: Prescriptions for Convergence*, Papers following from the Fifth Annual Competition Conference, September, 2001, Fiesole.

⁵ *Ex-ante* implementation includes remedies as a condition for allowing the merger and *ex post* includes remedies pursued after the merger is allowed. The former typically includes structural remedies and the latter behavioural remedies.

⁶ That is, a statutory injunctive relief is subject to the principles enunciated in *American Cyanamid v. Ethicon Ltd*, [1975] AC 396, as injunctive relief otherwise available in equity.

⁷ *Hofmann-La Roche v. Trade Secretary* [1975] AC, 295, at p. 341.

⁸ *Ibid.*, p.318.

⁹ Halsbury's Laws of England, 4th edn, para. 1011.

¹⁰ *Ibid.*

¹¹ *Riverwalk Ltd and Bikewater Tours Ltd. v. Jamaica Tourist Board, Tourism Product Development Co. Ltd, and the Attorney General*, Claim No: 2008 /HCV03080, Supreme Court of Jamaica, unreported.

¹² *The Financial Services Authority (a company limited by guarantee) (Respondent) v Sinaloa Gold plc and others (Respondents) and Barclays Bank plc (Appellant)* [2013] UKSC 11.

¹³ Such disputes may arise where the general remedy is less than (in case of a pecuniary penalty) or less exacting than (in the case of a behavioural remedy providing for divestiture or a de-coupling agreement to foster competition) the remedy for breach of the merger provision.

¹⁴ The choice between a fixed sum or an annual turnover figure is to ensure that small, medium sized and large firms are equally deterred.

The Many Faces of Jurisdiction under the Fair Competition Act

Marc S. Jones, Legal Officer, argues that the Privy Council decision in *Digicel Jamaica Limited* has restored jurisdiction under the Fair Competition Act

Jurisdiction may be defined, rather pithily, as the legitimate power to do something.¹ In the context of international law, jurisdiction wears three distinct faces, they are: jurisdiction to prescribe, to adjudicate and to enforce.² The jurisdiction to prescribe or prescriptive jurisdiction refers to the power to make law in relation to some subject matter such as an actor, a place or an activity. The jurisdiction to adjudicate or adjudicative jurisdiction refers to the power to hear and resolve disputes under the law. The jurisdiction to enforce or enforcement jurisdiction refers to the power to compel obedience to the law. Notably, although these "faces" or forms are conceptually distinct they are not mutually exclusive.

While the foregoing conception of jurisdiction may find a familiar home in international law, there is no reason to suppose that it cannot serve as a useful frame of analysis in a domestic law context.³ Indeed, it is worth noting that the three forms of jurisdiction broadly correspond with the Separation of Powers that informs the domestic constitutional order in which all legislation must operate. In this regard, the Fair Competition Act ("the FCA") arguably contains elements of the three forms of jurisdiction. Indeed the FCA itself can be understood as an exercise of prescriptive jurisdiction by Parliament over commercial activities in Jamaica except those enumerated under section 3 of the statute. In terms of adjudicative jurisdiction the FCA empowers the Fair

Trading Commission ("the FTC") under sections 5, 6, 7 and 8 as well as the courts under sections 46 and 49 to hear and resolve disputes under the statute. As it relates to enforcement jurisdiction the FCA empowers the FTC under various provisions such as sections 21(1) and 33(3) as well as the courts under section 47 to compel obedience to the obligations under the statute.

Generally, the assertion of jurisdiction under the FCA has produced vigorous litigation; see for example the decision in *The General Legal Council v The Fair Trading Commission* early in the life of the statute.⁴ Prior to August 24, 2017 perhaps the most authoritative pronouncements on jurisdiction were contained in the Court of Appeal's decision in *Jamaica Stock Exchange v Fair Trading Commission*.⁵ For nearly two decades that decision has held sway until August 24, 2017 when the Judicial Committee of the Privy Council delivered its decision in *Fair Trading Commission v Digicel Jamaica Limited & Anor*.⁶ This note will briefly examine and comment on the pronouncements that are relevant to jurisdiction in both *Stock Exchange* and *Digicel Jamaica Limited* through the lens of the specific forms of jurisdiction identified above.

Stock Exchange: A jurisdictional low water mark

The dispute which precipitated the litigation in *Stock Exchange* was ignited by the FTC's attempts to hold a hearing into whether or not the Jamaica Stock

Exchange ("the JSE") had violated the FCA by, *inter alia*, abusing a dominant position in the market for publicly traded stocks. Arguably, this could be viewed as an attempt by the FTC to assert its adjudicative jurisdiction under sections 5, 6, 7 and 8 of the statute. In challenging that attempt the JSE argued, *inter alia*, that the market for publicly traded stocks is exempt from the application of the statute. In that way, the JSE was essentially resisting the potential exercise of adjudicative jurisdiction by arguing that the scope of the prescriptive jurisdiction under the statute excluded the market in question. Notably, the JSE also argued that the proposed hearing was likely to violate its right under section 20(2) of the Constitution 1962 (now section 16(2) of the Charter) to a fair hearing before an "independent and impartial tribunal".⁷

In accepting the JSE's arguments, the Court of Appeal held that the FCA does not apply to markets in which securities, money or choses in action are traded.⁸ This holding is based on an inference drawn by the Court from the definition of "goods" under the FCA. The Court's inference was that by that definition Parliament intended to exclude such markets from the requirements of competition under the statute.⁹ Arguably, the effect of the Court's holding was to restrict the scope of the prescriptive jurisdiction which Parliament had exercised when it enacted the FCA.

On the argument concerning the FTC's proposed hearing, Forte P. (who

gave the leading judgment in the Court of Appeal) opined that it was likely to violate the JSE's right under section 20 (2) of the Constitution (now section 16 (2) of the Charter) because by the terms of the FCA the FTC acted as both investigator and judge in the cause.¹⁰ In the learned President's view, it was not appropriate for the FTC to 'judge' the cause because of the possibility of bias arising from its role as the body "appointed to carry out the intention of the legislature" to encourage competition. Accordingly, the FTC was not an "independent and impartial tribunal" for the purposes of adjudicating consis-



the Supreme Court to adjudicate on the matter and enforce its recommendations. The firms resisted the claim for enforcement on a number of grounds which included the argument that the FCA did not apply to the telecommunications market.¹² This is reminiscent of the JSE's approach in *Stock Exchange* in so far as the firms were resisting the potential exercise of enforcement jurisdiction by arguing that the scope of the prescriptive jurisdiction under the statute excluded the market in question.

The case was litigated all the way to the Privy Council. On the question of the jurisdictional reach of the statute



markets (for example the stock market or the insurance market) could be treated as markets involving the provision of services for the purposes of the statute. This result, arguably, accords with the legislative scheme of the FCA. There is also much force in the view that where Parliament intended not to exercise prescriptive jurisdiction by way of the FCA it expressly did so under section 3 which sets out the matters to which the statute does not apply. Notably, section 3 does not exempt securities, money or choses in action from the application of the statute. Accordingly, in light of section 3, there



tently with the JSE's constitutional right.¹¹ Arguably, this view amounts to a denial of the FTC's adjudicative jurisdiction. This in turn stymied the effectiveness of the FTC's enforcement jurisdiction under those provisions of the statute which require it to make a "finding" (in other words to adjudicate) before it can proceed to enforcement.

Digicel Jamaica Limited: The tide turns on jurisdiction

If the decision in *Stock Exchange* can be understood as a low water mark so far as jurisdiction under the FCA is concerned, then the recent decision in *Digicel Jamaica Limited* can be understood as the tide turning in favour of jurisdiction. This latest litigation was sparked by the FTC's investigation into the merger between the telecommunications firms of Digicel Jamaica Ltd and Oceanic Digital Jamaica Ltd (which traded in Jamaica as "Claro"). The FTC had recommended that the merger be subject to conditions, and it applied to

over the telecommunications market, the Privy Council expressly adopted an approach that is contrary to that of the Court of Appeal in *Stock Exchange*. In this regard, their Lordships held that the FCA does apply to the telecommunications market; and in so holding they unequivocally stated that:

*"There is no provision of the Fair Competition Act excluding any particular sectoral market from the Commission's powers of intervention, and it has not been suggested that any such provision can be implied from the Act itself."*¹³

This is a strong statement which eschews the restrictive framing of prescriptive jurisdiction under the FCA that had been inferred by the Court in *Stock Exchange*. The practical result is that notwithstanding the definition of "goods", the FCA does apply to markets in which securities, money or choses in action are traded. This is undoubtedly right.

Given the unqualified definition of "service" under the statute, such

is little or no rationale for treating the definition of "goods" as limiting the jurisdictional reach of the statute.¹⁴

So far as the FTC's adjudicative jurisdiction is concerned, while it was not directly at issue before the Privy Council, there is *dicta* by their Lordships that arguably presumes the propriety of that jurisdiction in the FTC. In this regard, the Privy Council observed that the FTC has the power to address an abuse of dominance in the telecommunications market.¹⁵ This is an important observation because the statutory provisions which so empower the FTC do require it to make a "finding" as it relates to an abuse of dominance, and this in turn ordinarily presumes some form of adjudication on the merits to arrive at same.

A prologue on Digicel Jamaica Limited: Arguments for adjudicative jurisdiction

There is much to commend the last mentioned argument in favour of the FTC's adjudicative jurisdiction; notwith-

standing Forte P.'s reservations in *Stock Exchange*. The concerns which impelled the learned President to his conclusion may, on closer examination, be resolved in support of such jurisdiction. In this regard, the view that the FTC may be affected by apparent bias on the ground that it is "appointed to carry out the intention of the legislature" is certainly open to question. This is so because it is reasonable to expect that a decision-maker, who is ordinarily concerned with the administration of a statute, will be influenced by relevant policy considerations which inform the statutory framework.¹⁶ Indeed to do otherwise may expose the decision-maker to judicial review. Therefore, in the language of apparent bias jurisprudence, a fair-minded and informed observer would *not* apprehend bias in the FTC only on the ground that it will give due regard to the public policy embodied in the FCA when exercising its adjudicative jurisdiction.¹⁷

The argument in favour of the FTC's adjudicative jurisdiction is further

buttressed by the fact that under section 49 FCA, which affords aggrieved parties a right of appeal, the proceedings of the FTC are subject to subsequent control by the Supreme Court.¹⁸ The Supreme Court is a tribunal which satisfies the requirements of independence and impartiality under section 20 (2) of the Constitution (now section 16 (2) of the Charter).

Notably, section 49 FCA empowers the Supreme Court to "confirm, modify or reverse the findings of the Commission or any part thereof". Consequently, any party aggrieved by the FTC's exercise of adjudicative jurisdiction may, on appeal, obtain the full benefit of his constitutional right to a fair hearing.¹⁹ On this basis the FTC may properly exercise its adjudicative jurisdiction without violating section 20(2) of the Constitution (now section 16(2) of the Charter) or otherwise implicating any constitutional due process concerns. Indeed, this much was recently accepted by the Court of Appeal in its decision in *Olint Corp. Ltd & Anor v Financial*

Services Commission in relation to Olint's complaint about the fairness of an investigation by the Financial Services Commission under the Securities Act, which contains a similar right of appeal as that found in the FCA.²⁰

The big picture

In conclusion two decisions of Jamaica's appellate courts, *Stock Exchange* and *Digicel Jamaica Limited*, have had significant impact on the jurisdictional reach of the statute. This impact can be examined through the lens of the various forms of jurisdiction discussed above. In this regard *Stock Exchange*, which involved a challenge to prescriptive and adjudicative jurisdiction, may be read as curtailing the jurisdictional reach of the statute. However the bases on which *Stock Exchange* may be so read must now be questioned in light of the recent decision in *Digicel Jamaica Limited*. When that is done it is clear that *Digicel Jamaica Limited* represents a bold restoration of jurisdiction under the FCA in all its many forms. —

Endnotes

¹ See Justice Holmes' discussion about jurisdiction and power in *McDonald v. Mabee*, 243 U.S. 90 (1917).

² Wasserman, Howard. "Prescriptive Jurisdiction, Adjudicative Jurisdiction and the Ministerial Exemption." *University of Pennsylvania Law Review* PeNumbra, Vol 160, September 2011, accessed at: http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1079&context=penn_law_review_online on October 14, 2017.

³ An example where this conception of jurisdiction has been discussed in the context of domestic law, in particular an anti-trust context, is the dissenting opinion of Justice Scalia in *Hartford Fire Insurance Co et al v California et al* 509 U.S. 764 (1993) at page 813.

⁴ Suit No. E35 of 1995, Judgment Delivered on November 14, 1995.

⁵ S.C.C.A No. 92/97, Judgment Delivered on January 29, 2001.

⁶ [2017] UKPC 28.

⁷ Section 20(2) of the Constitution 1962 has been repealed and re-enacted in substantially the same terms as section 16(2) of the Charter of Fundamental Rights and Freedoms 2011.

⁸ S.C.C.A No. 92/97, Judgment Delivered on January 29, 2001 at page 21.

⁹ *ibid.*

¹⁰ S.C.C.A No. 92/97, Judgment Delivered on January 29, 2001 at page 36.

¹¹ *ibid.*

¹² [2017] UKPC 28 at para 7.

¹³ [2017] UKPC 28 at para 12.

¹⁴ Note that under section 2(3) of the FCA "market" is defined to include "services".

¹⁵ [2017] UKPC 28 at para 12.

¹⁶ O'Brien, Finin. "Nemo Iudex in Causa Sua: Aspects of the No-Bias Rule of Constitutional Justice in Courts and Administrative Bodies." *Irish Journal of Legal Studies*, Vol 2(2), July 2013, accessed at: http://ijls.ie/wp-content/uploads/2013/07/IJLS_Vol_2_Issue_2_Article_2_O'Brien.pdf on October 14, 2017.

¹⁷ Wade W, Forsyth C, *Administrative Law* (11th edition, Oxford University Press, 2014) at page 394.

¹⁸ See the decision of the European Court of Human Rights in *Kingsley v United Kingdom* (Application 35605/97), 7 November 2000, on Article 6 of the European Convention on Human Rights which is in substantially similar terms to section 20(2) of the Constitution (now section 16(2) of the Charter)

¹⁹ See the decision in *Magill v Porter* [2001] UKHL 76 in support of this proposition.

²⁰ [2010] JMCA Civ 44 at paras 64 to 69. See also section 681(C) of the Securities Act 1993 (as amended).

FUTURE FARMS

small and smart

SURVEY DRONES

Aerial drones survey the fields, mapping weeds, yield and soil variation. This enables precise application of inputs, mapping spread of pernicious weed blackgrass could increase wheat yields by 2-5%.

FLEET OF AGRIBOTS

A herd of specialised agribots tend to crops, weeding, fertilising and harvesting. Robots capable of microdot application of fertiliser reduce fertiliser cost by 99.9%.



FARMING DATA

The farm generates vast quantities of rich and varied data. This is stored in the cloud. Data can be used as digital evidence reducing time spent completing grant applications or carrying out farm inspections saving on average £5,500 per farm per year.

TEXTING COWS

Sensors attached to livestock allowing monitoring of animal health and wellbeing. They can send texts to alert farmers when a cow goes into labour or develops infection increasing herd survival and increasing milk yields by 10%.

SMART TRACTORS

GPS controlled steering and optimised route planning reduces soil erosion, saving fuel costs by 10%.

Source: nesta.org.uk

Getting smart with IT

Smart Irrigation



Smart Farm Thinking

By Ann-Marie Grant, General Manager

Food security is a major concern for governments. The ability of a nation to feed its people, on a sustainable basis, is fundamental. According to the Food and Agriculture Organization, by 2025 the global population will reach 8 billion people and by 2050 over 9.6 billion. As global food demand increases so too are the concerns about how to feed the world population on a sustainable and cost-effective way without being unfriendly to the environment. While a dramatic increase in Jamaica's population is not anticipated, this rapid growth in the global population is likely to have a big impact on international food prices, with grave implications for Jamaica given the importance of food imports.

One of the main goals of the Ministry of Industry, Commerce, Agriculture and Fisheries is to drive primary agriculture produce along the value chain towards full commercialization. The Ministry is mindful of the need for expansion and sustainable development of the agriculture industry to achieving its goal; and has over the years invested in critical areas of the industry. The agricultural-parks system is an example. Other examples include infrastructure development in irrigation systems, road, as well as the strengthening of the legal framework and systems to better facilitate and spur commercial activities in the sector. More is however needed. To efficiently transform a manufacturing plant, a delivery system, a company, or a sector, the one constant element is the application of technological change. We have seen this in the service industry. Can farming benefit from technological advancement? The domain of smart farming says yes.

What is Smart Farming?

Imagine Farmer Brown out in the field or at home even on his tablet monitoring how well his crops are responding to the new fertilizer that was 'recommended' based on soil analyses and climate by a data management and assessment software. Imagine further Farmer Brown tracking the location of his pigs and cows. This is what smart farming is all about and much more. It is the application of sensors in the field, in the soil and on animals to provide farmers with real-time data which allows prompt decision making to increase agricultural output and enhance animal husbandry. Given the rapid technological improvements in data collection, storage and processing devices, the possibilities for smart farming are infinite.

What is required?

To reach its maximum potential, the agricultural sector must fully embrace smart farming. This is most likely to happen in an environment which facilitates research, innovation and investment in this new farming technology. The agriculture sec-

tor in Jamaica is dependent primarily on rainfall to supply water for farm lands. In reinforcing the need for an expansion of irrigation systems in the sector, Minister Samuda lamented: "the fluctuation in the fortune of the agricultural sector with incidences of rain and drought underlines our serious dependence on rainfall for agriculture". While investments in irrigation systems will reduce the susceptibility of agriculture to weather fluctuations, smart irrigation will reduce the cost. Using technology will optimize irrigation management, allowing for water conservation through the monitoring of soil moisture and supplying the specific water needs of crops. Water can be saved for non-rainy days.

A boon to farmers in safeguarding their animals and increasing production is the IoT (Internet of things). IoT is the interconnection via the Internet of computing devices embedded in objects (or tagged to animals) enabling the devices to send and receive data in real time. By 'smartening up' their animals, farmers will be able to track and monitor, at the click of a button, the feeding, health and critically, the location of livestock.

Putting IT together

Competition is said to be the key to improving efficiency. In particular, competition drives producers to produce at the lowest possible cost, to produce goods that consumers want and to supply those goods at the lowest possible prices to consumers. With the near homogeneity of agricultural products, local farmers are likely to have to engage in fierce price competition with each other and even more fiercely with foreign farmers through imports. Investments in new technologies and the application of new methods are therefore critical in boosting productivity and margins in the agriculture sector while keeping prices low. Smart technology will allow some amount of differentiation by improvement in the consistency of quality. Farmers are not immune to the competitive process and are encouraged through competition to produce, sustainably, high quality food while maximising productivity.

We know of the vast improvements that technology has delivered and continues to deliver to manufacturers and governments. These benefits can also be extended to farmers and their customers. Applying hi-tech gadgets and systems to farming might appear to be beyond the scope of an industry which is very labour-intensive, often with low rewards. However, smart farming is scalable, having the ability to adjust to the size of the farm on which it is applied. Its use may reduce some usage of labour but it will increase the profitability of the agriculture sector. Smart farming can be implemented in stages, addressing one issue at a time. Smart farming is the future of farming in Jamaica. —

Cultivating Competition Law & Policy: Is the climate right for agriculture?

By Wendy M. Duncan, Legal Officer

Wendell Berry, in *The Unsettling of America: Culture and Agriculture*, observed that *"The soil is the greatest connector of lives, the source and destination of all. It is the healer and restorer and resurrector, by which disease passes into health, age into youth, death into life. Without proper care for it we can have no life."*

A vital resource indeed, battles have been fought and lives lost over the soil and control of it. Agriculture is such an essential part of life that the question naturally arises whether it should be left to the fate of market forces, or whether it is best monitored closely by governments – outside the realm of competition law and policy. From time immemorial, the soil and its produce have been the subject of fierce 'competition' – should it now be the subject of competition law and policy?

Agriculture and competition law have been the subject of an ongoing dispute whose genesis is rooted in the unique characteristics of the sector. On one side are those of the view that 'farming should be entirely exempt from compe-

titution law due to the peculiarities of the industry which would offer little compatibility with free-market dogmas'.¹ On the other side are those who feel that 'the nature of the agricultural society is not so particular that rules as flexible as competition law could not bend to accommodate it without sacrificing their principles'. As one spectator describes it, 'local interests versus globalization, devotees of the administered economy versus believers in the free market, all the ingredients are present for a serious, but often caricatured confrontation'.

Special Characteristics

There are a number of peculiar characteristics specifically relating to the agricultural sector which, in some other jurisdictions such as the European Community (EC), are taken into ac-

count in relation to the application of competition policy.

Variability

Unlike most other sectors, in relation to farming, production is for the most part cyclical and prone to climate and health issues. Variability of production, given the same inputs, is a distinctive feature of many agricultural products. Crop yields are subject to variations in weather and water supply – factors which cannot be reliably predicted before the planting season. Examples of the devastating effect weather can have on production in the agricultural sector abound in the Caribbean. In Jamaica alone, entire crops such as papaya, banana and coconuts have been extensively damaged or completely destroyed as a result of hurricanes, floods, or droughts. In many instances, farmers did not recover from the damage. This unreliability creates a risk that the output of a particular product may be significantly lower in some periods than others and according to regions.

Further away from our shores, the 'French Beef Case'² provides an interesting illustration of how health issues may come to bear in the application of competition law and policy to the agricultural sector. The facts of the case arose in October 2000 when the demand for meat in the EU was greatly affected after an outbreak of Bovine Spongiform Encephalopathy (BSE) – more commonly known as 'Mad Cow Disease' – in several Member states. This led to intervention in the sector by the French Government. The French Minister of Agriculture organized a meeting between federations representing beef farmers and those representing slaughterers. The outcome was an agreement which appeared to be collusive in nature, but has been described as being more in the nature of a 'crisis cartel'. The peculiar aspect of the case was that the agreement was actually arrived at as a result of "forceful intervention" by the Government in the events leading up to the infringement – a basis upon which, on a subsequent appeal, a fine which had been imposed by the Competition Commission was reduced by 30%. Such cartels are generally caused by a downturn in a particular industry or the economy as a whole.

Transport and Size

Another feature of the industry is that produce is generally perishable and there is a significant time-lag between production and the produce being ready to be placed on the market. Therefore there is no short-term flexibility in many farming products. Transportation is characteristically expensive for certain bulky, heavy, and perishable items – particularly those requiring refrigeration such as orange juice or milk. When the transport cost is greater than the difference in cost between producing the product in the most efficient and least efficient areas, the product may be produced in areas that are not the most productively efficient; while products which have a relatively longer life, are more storable and high price (compared to weight) and may have broader geographic markets for

competition purposes. The ability to store a product can smooth out short-run production problems and permit transport over great distances. For certain products, the cost of fast transport is easily made up by sales values. Tropical fruits and some vegetables are sometimes flown great distances to their destinations.

Most farming businesses tend to be small scale and fragmented and have to compete with the strong buying power of large industrial farming companies and wide distribution. This is why there is such a prevalence of farmers' associations and co-operatives. Cooperatives with a small percentage of production capacity usually are unlikely to raise substantial anti-competitive concerns; and when cooperatives do not include all members and cannot observe all market trading to police market allocation agreements, cartel activities such as limitation of output are difficult to pursue. Larger cooperatives, which are highly inclusive, however, may have the potential to engage in anti-competitive practices. Further, some cooperatives may require that farmers sell their products only through the cooperative. While this may not necessarily be anti-competitive in all circumstances, it may be if a highly inclusive cooperative that has already achieved economies of scale demands exclusive rights to sell a farmer's product – limiting effective entry and the ability of consumers to obtain products from other sources.³

Consumer Information

Where consumers are concerned, they often will have difficulty in assessing whether agricultural products are high or low quality. In the world of economics, goods are classified in relation to the ability of consumers to assess them. A *search* good is one whose quality a consumer knows before consuming it, an *experience* good is one where the consumer knows the quality only after consumption, and a *credence* good is one where a consumer is unable to determine the quality before consuming – but whose history will affect some consumers' attitudes towards the good. Food is considered to be a *credence* or 'experience' good as consumers are unable to assess the qualities of the product before consumption. For instance, 'one strawberry may look and smell very much like another strawberry. But this does not mean that they will have the same taste'.⁴ The problem with *credence* goods is that, unless there are signals of quality, consumers may be reluctant to buy the products. In the absence of such signals, high quality producers will have negative externalities from low-quality production, because the low-quality production will reduce consumer willingness to consume the high-quality product.

Differentiation

Basic agricultural commodities, unlike branded products, tend to be homogeneous between producers. The significance of this is that, in the absence of cartels, profits will be relatively

low, with sales prices at levels just high enough to cover the marginal production costs (including opportunity costs of the land) of the marginal producer. Undifferentiated markets with inelastic demand create high profits for cartel operation compared to markets with other characteristics.⁵ Concomitantly, most undifferentiated agricultural products, such as cane or corn, do not have major advertising and no individual producer receives sufficient direct benefits to compensate the costs of advertising. As a result even large producer organizations may experience free-riding behavior when advertising is involved.⁶

Law and Policy

It has been observed that agricultural policy has often developed without concern for principles of competition policy and that, historically, agricultural policies have focused on improving the welfare of agricultural producers, because of 'political imperatives and social values'.⁷ For example, the Treaty Establishing the European Community⁸ states that the objective of agricultural policy shall include insuring "a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture". In some instances, policymakers, with the aim of increasing producer welfare, have implemented regulations which sometimes actually lead to anti-competitive effects and result in increasing consumer prices, limiting the quantity of goods sold and which negatively impact quality standards. For this very reason, in some jurisdictions agricultural products are

social welfare losses.⁹

The EU and the US are jurisdictions which have created such broad exemptions in their competition legislation. Article 36 of the Consolidated Treaty of the European Union provides that "*the chapter relating to the rules of competition shall apply to production of and trade in agricultural products only to the extent determined by the Council within the framework of Article 37(2) and (3) and in accordance with the procedure therein...*" In fact, the special regime applied to the farming sector is the result of a combination of several EU provisions.¹⁰

In the US, the Capper-Volstead Act¹¹ provides that: "...persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporations or otherwise...in collectively processing, preparing for market, handling and marketing interstate and foreign commerce, such products of persons so engaged".

A Role for Competition?

The question arises, is there a role for competition law in the agricultural sector given the sensitivities of the sector? Simply, the answer is yes. The truth is that joint activity by agro-food producers can have beneficial effects such as achieving economies of scale and scope, reducing costs of transactions, forming and maintaining "brands", and conducting advertising and research. Similarly, farmer co-operatives aimed at selling output and involving a small percentage of output, have the potential to serve pro-competitive purposes and increase efficiency.¹² In the same vein, quantity restrictions may be necessary occasionally to prevent producers from over-harvesting or over-using common areas – for instance with fisheries.¹³ It is also true, however, that 'joint-activity' can generate significant harm to consumers when it focuses on price or quantity setting and there is relatively little competition from close substitutes. In such instances, the joint-activity could constitute collusive behavior and indicate the existence of a cartel.



expressly exempted from competition laws. These exemptions tend to be much broader than in other sectors – so that, in some circumstances, they have been used to form cartels, with the cartels being enforced by governments in some instances (as in the *French Beef Case*); resulting in large consumer and

from farmers. Buyers may sometimes bid rigs in order to pay a lower price for output than they otherwise would. This type of bid-rigging would be harmful to consumers.

Other competition concerns could arise from the setting of standards by producers. Though this may be generally benefi-

cially beneficial to consumers, it may also be harmful to producers if it results in a loss of market power or if it leads to a reduction in the quality of the products.

The question arises, is there a role for competition law in the agricultural sector given the sensitivities of the sector? Simply, the answer is yes.

cial for consumers and helps to ensure quality, standard-setting may also result in limiting output to the detriment of consumers. For instance, it has been observed that standards which become increasingly stringent as the quantity produced increases are particularly likely to result in an adverse effect on competition.¹⁴ In this respect, the OECD Competition Committee cites the example where standards governing orange production became stricter in relation to “minimum size” at times of high production, resulting in limiting the number of oranges sold through fresh outlets – apparently for the benefit of producers rather than consumers.

The above shows that competition has a beneficial role to play in agriculture. The OECD has concluded¹⁵ that the most common areas of activity for competition authorities are: bid-rigging among buyers, anti-competitive mergers and price-fixing producers.

How Should Agriculture be Treated?

Exemptions to competition legislation do not appear to be the most effective way to treat the agricultural sector. Very often, such exemptions can have the effect of actually providing protection to anti-competitive activities such as cartels, leading to consumer harm. In these instances, consumers are worse off. Alternatively, in many cases although exemptions exist, producers do not actually pursue anti-competitive activities. The OECD has observed that ‘...in either case, there is little reason to maintain a broad competition law exemption to farmers’.¹⁶ It further recommends that:

“As an alternative, the agricultural sector can be

treated with the same carefully-tailored, case-specific competition analysis that is considered appropriate in many other sectors. If farmers seek guidance about what sorts of activities are permissible, government policy statements can clarify those types of conduct that would be considered in the public interest and clearly permissible as well as those types of conduct that would be considered harmful”.

The Climate in Jamaica

Unlike the EU and the US, there are no specific exemptions to the agricultural sector in the Fair Competition Act and all activities are subject to review by the Fair Trading Commission. Section 29 of the Act, however, provides for the authorization of agreements or business practices where they are likely to promote the public benefit. This provision has, in fact, been utilized by the Commission in approaching and dealing with the sensitivities and peculiarities of the agricultural sector and, in the past, a number of Boards such as Coffee, Banana, Cocoa, and Coconut have been the subject of such grants of authorization on the basis that they promote some form of benefit to the public.

Meanwhile, the Commission has carried out investigations and advocacy activities in industries such as dairy, rice, and fertilizer. The agricultural sector, with all of its unique characteristics, provides relevant, solid and fertile ground for the development of and application of competition law and policy in Jamaica. —

Endnotes

¹ Michel Debroux, Hogan & Hartson MNP, Paris: ‘Agriculture and Competition law: a stormy relationship’, January 2009

² Coop de France Bétail et Viande (formerly Federation National de la Cooperation Betail et Viande (FNCBV) v Commission of the European Communities, [0] C–101/07 P [2009] 4 C.M.L.R. 15 at [9].

³ OECD Policy Roundtable: Competition and Regulation in Agriculture: Monopsony Buying and Joint Selling 2004 pg 20

⁴ Supra at para 2.1

⁵ OECD Policy Roundtable: Competition and Regulation in Agriculture: Monopsony Buying and Joint Selling 2004 pg 18

⁶ Ibid

⁷ Supra at pg 15

⁸ 2002/C 325/01

⁹ Ibid

¹⁰ Michel Debroux, Hogan & Hartson MNP, Paris: ‘Agriculture and Competition law: a stormy relationship’, January 2009 at pg 17

¹¹ Public-No. 146-67th Congress

¹² OECD Policy Roundtable: Competition and Regulation in Agriculture: Monopsony Buying and Joint Selling 2004 pg 7

¹³ Ibid

¹⁴ Ibid at pg 9

¹⁵ Ibid



IS CANE SUGAR STILL RELEVANT IN THE GLOBAL MARKET?

By Sugar Industry Authority

Cane sugar derived from the processing of sugarcane has always been in high demand globally. The old adage, “a spoonful of sugar makes the medicine go down” is widely known and is as true today as it ever was. The use of sugar is important not just to make medicine palatable but this much sought after sweetener is used in baked products, drinks, other manufactured foods, and in pharmaceuticals. Some people believe that type 2 diabetes is linked to high levels of sugar in the blood but eating too much sugar is not the cause of the disease. Studies show that sweetened foods can increase the risk of type 2 diabetes, but not necessarily enough to cause the disease. As developing countries become wealthier, the demand for sugar increases.

Although there is competition from alternative sweeteners such as Stevia, Aspartame and Splenda, the demand for sugar is growing especially in Asia and Africa. To meet the growing demand worldwide, over 169 million tonnes of cane sugar is expected to be produced during the 2017/2018 crop from 23.8 million hectares of land in over 90 countries including Jamaica, one of only four remaining

sugar-producing territories in the Caribbean.

The sugar industry plays an important role in the Jamaican economy and is the country's most important agricultural crop contributing under 2% to the nation's G.D.P, and earns approximately US\$80 million annually. Numbered among the cane farms are over 3,000 small units (>5ha) where the sugarcane produced is processed at the five factories that operated in 2017. During the cropping season, over 50,000 persons are directly employed, and out of crop, approximately 20,000 persons. It is estimated that some 120,000 persons derive their income directly and indirectly from the industry, mostly around Jamaica's rural towns of Frome in Westmoreland, Clark's Town in Trelawny, Lionel Town in Clarendon, Siloah in St Elizabeth, Luidas Vale in St Catherine and Duckenfield in St Thomas. These centers of activity slow the rural/urban drift as people seek to find employment in major towns such as Negril, Montego Bay, Falmouth, May Pen, Portmore, Spanish Town and Morant Bay where income derived from the sugarcane sector is used to create other business enterprises. This has significant implications for levels of crime in these towns and communities and for tourism in the resort areas.

The industry achieved its highest level of production in 1965 when 514,825 tonnes of sugar were produced. Since then sugar production has trended down, declining to under 100,000. The local demand for sugar is about 60,000 tonnes. For the 2016/2017 sugar crop, sugarcane was grown on over 35,000 hectares of land from which almost 88,000 tonnes of sugar were produced. There are over 23 varieties of sugarcane being grown in Jamaica, and these are locally selected and adapted for each Ecological Zone to ensure maximum production and greatest possible accumulation of sugar for highest returns to the farmers, and for factory production targets to be realized. Leading the charge in the vari-

ety improvement process is the Research Division of the Sugar Industry Authority. This work is done in collaboration with the West Indies Sugarcane Breeding Station based in Barbados. The developmental work is a continuous process whereby each variety takes 12 – 15 years to develop.

Multipurpose varieties support the development of various products and income streams using the entire sugarcane plant as the raw material and here lie the future earnings for the industry as it seeks to realize its full potential and ensure viability.

Sugar is also produced from sugar beet grown in temperate countries, and competes for the sugar market share in the UK and European Union where much of the cane sugar produced in Jamaica is traditionally sold. The price paid for sugar in these markets, and Jamaica's ability to sell sugar to these markets, are influenced by agricultural policies and negotiations within the context of Brexit and other similar policy changes. Brexit will have an impact on existing arrangements.

Nevertheless, there is a strong local market positioned to accommodate any increases in production and excess can be sold within the CARICOM region.

The sugarcane industry is one that is fully integrated from field to manufacturing and marketing and is one of the few industries in Jamaica that applies science, technology and innovation in its operations. The industry employs a wide range of professionals: technologists, agronomists, accountants, chemists, environmentalists, managers, plant nutritionists and pathologists at different levels and interfaces both nationally and internationally with various sectors for example chemical supply houses (fertilizers and pesticides), suppliers of tools, farm machinery, pumps and other factory equipment, and sugar testing equipment. The sugarcane industry also networks with sectors such as transportation, packaging, rum, finance, shipping, civil aviation and legal services.

The sugarcane industry is privately

owned and should be able to provide the inputs required for sustainability, including capital investment in land improvement, ratoon maintenance, replanting, drip irrigation and drainage and the installation of newer, more energy efficient factory equipment coupled with efficient management and entrepreneurial approach to problem solving and profitability. Private sector ownership and management also provide the appropriate conditions for the achievement of cost reductions within the industry.

Sugarcane provides the kind of ground cover that protects the soil from erosion, helps to preserve the natural beauty and adds to the green, lush foliage of our island home. Sugarcane, a renewable energy source, is noted as one of the most efficient converter of the sun's energy and also as one of the best crops for the sequestration of carbon from the atmosphere, hence playing an important role in mitigating climate change. At the same time, the commercial production of sugarcane requires the use of much chemicals; herbicides for proper weed control, fertilizers to boost yields and chemical ripeners to boost sucrose accumulation. This extensive use of chemicals can cause harm to the ecosystem if not properly managed as runoffs can occur and streams and rivers affected resulting in loss of potable water and fish kill.

The future of the industry involves increased productivity and multi-product development to result in zero waste. Currently, molasses, a by-product of sugar production, is utilized in the production of rum but the ethanol which is first produced can also be added to gasoline in the amount of 10 per cent for the transportation sector, or used in the manufacturing of pharmaceuticals and beverages. Bagasse, the fiber that remains after the sugarcane is crushed is used as fuel at the factories to generate electricity for the operations, and, excess can be sold to national grids. The future of the sugarcane industry demands moving away from a

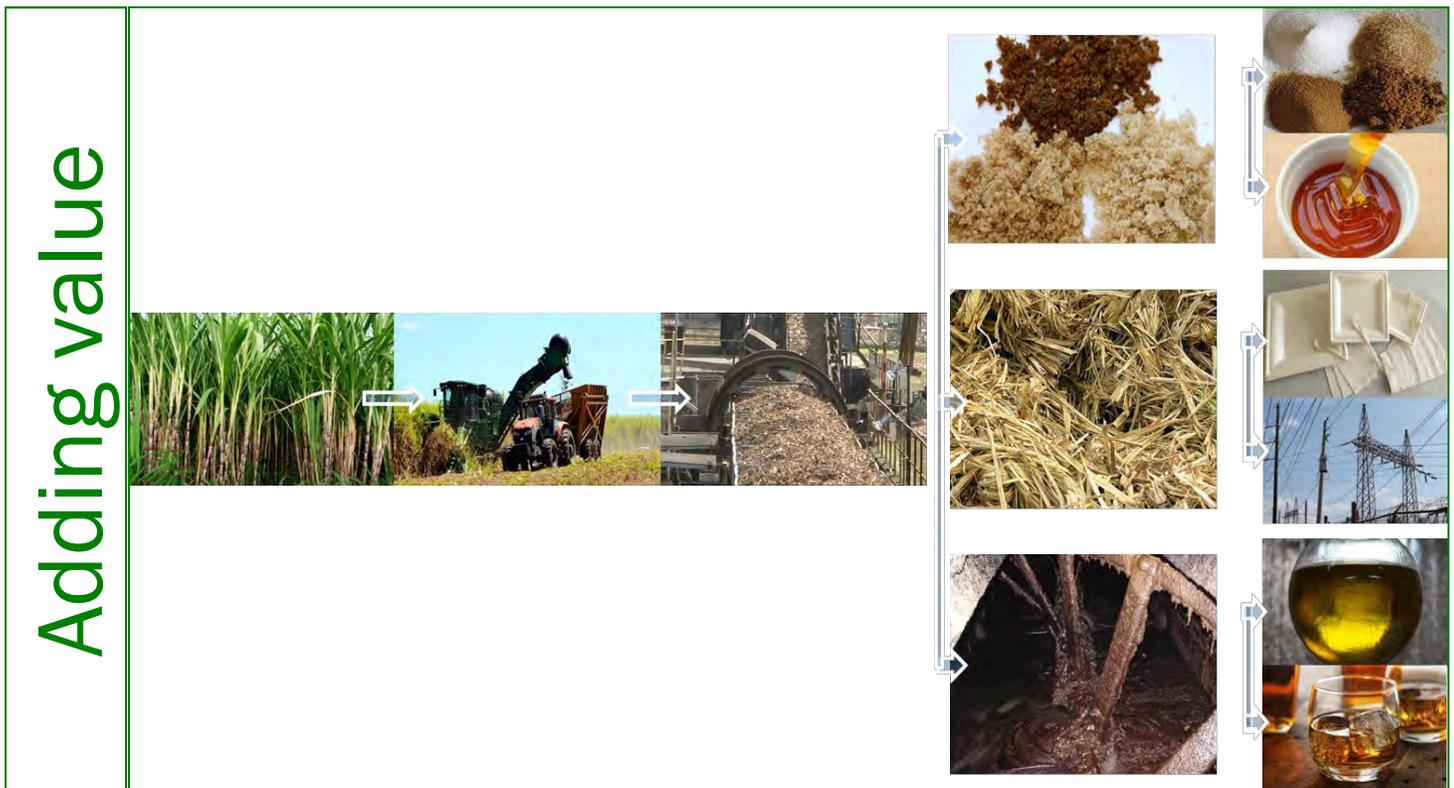
It is envisaged that with the necessary capital and technological inputs, the transformation of the industry from a single product to a multi-product one, will result in significant increases in revenue and employment.

single product to multiple products and value added. This value added process has started with the implementation of packaged sugar in various sizes for the retail trade. The sugarcane plant is used as raw materials for processing at sugar factories which are transformed to bio-refineries. Other waste products from sugar factory operations such as filter press mud and fly ash are useful as organic fertilizers and soil ameliorants and boiler ash used as material for mixing in concrete for paving roads. The resultant sugarcane industry will see the production of products such as specialty sugars, ethanol, xanthan gum and electricity (cogeneration) generating significant

increases in revenue and employment.

Cane sugar is relevant to both the local and the global market. The sugarcane industry is a vital sector of the Jamaican economy, providing significant economic and social support. There are several opportunities for the industry to take advantage of and to add further economic value, these areas include specialty sugars, bio-refinery activities, and cogeneration. Additionally, the industry needs to adopt a 'zero waste concept' approach in field and factory operations where no part of the sugarcane plant, or end products generated is lost, but rather a closed loop operation is embraced.

It is envisaged that with the necessary capital and technological inputs, the transformation of the industry from a single product to a multi-product one, will result in significant increases in revenue and employment. Cane sugar is even more vital as we face issues relating to climate change and the need for mitigation measures and for increased amounts of bio-degradable products which can be derived from cane fiber. The industry continues to play an important role in our national development, and when fully repositioned and transformed will make an even greater contribution to the Jamaican economy and world trade.



Endnotes

<http://www.jamaicasugar.org>

<http://www.isosugar.org/sugarsector/sugar>

<http://m.jamaicaobserver.com/news/Sugar-industry-on-the-rebound--says-Samuda?profile=1373>

<http://jis.gov.jm/new-guidelines-packaging-sugar/>

(2016) OECD/FAO Agricultural Outlook 2016-2025



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AGRO'wing' Jamaica's Economy

By Desroy Reid, Competition Analyst

Jamaica has long searched for a sustainable engine of growth to achieve its millennial goals embodied by Vision2030. This has proven to be elusive. In fact, for the past 30 years the country has grown at an average of one per cent yearly, and for the past decade this average has been a fraction of a per cent. The island, ever resilient, however, has looked at several alternatives to drive growth from tourism to, the most recent, business process outsourcing and, on a more general basis, special economic zones. One lesson that seems to have been learnt by successive government administrations over the years is that there is no panacea to growth and therefore a diversified approach may yield the greatest fruit.

Thus saying, the country is going back to its roots by exploring its connection to the soil in adding agro-parks to the basket of businesses being explored. The island has had a rich history in agriculture dating back to the days of sugarcane, then banana among crops. Agro-park is an advancement of that focus on agriculture and the government sees it as being a significant cog in the wheel of its long-term growth-development strategy.

In 2013 Minister of Agriculture ear-

marked over 8000 acres of land, excluding private lands that will also be included as part of the agro-park network, to be put into agricultural production to be divided among nine agro-parks across the island. The idea conceptualized was that government will provide all the infrastructure required to get production started (irrigation, land clearing, access roads, drainage etc.); farmer-investors would provide capital for marketing and the private sector would buy the produce and dispense of it as they see it fit. To date, all nine agro-parks are in operation with varying degrees of success and there are even talks of expanding the program by a further nine agro-parks on 20,000 acres of land across the island by 2019.

What are agro-parks?

The National Irrigation Commission Limited defines agro-parks as an area of intensive, contiguous, parcel of land for agricultural production which seeks to integrate all facets of the agricultural value chain from pre-production to production, post harvesting and marketing.

Objectives of agro-parks

The intended purpose of agro-parks is to use farm lands, that are underutilized, in a more efficient manner through the

employment of best practices of agricultural production system. Agro-parks are intended to produce crops at competitive prices to facilitate import substitution of targeted crops, enhance agricultural supply chain, deepen industrial linkages and increase food security.

Import substitution: The Gap

From inception in 2013 to September 2016 harvesting of produce from the agro-parks totaled over 3.5 million kilograms. The produce totaled included onions, peppers, vegetables, potatoes, yams, melons and pineapples.

By contrast in 2016 alone the country imported more than 7.5 million kilograms of onions (85 per cent of total consumed in Jamaica), 2 million kilograms of pepper and almost 100 per cent of the sweet corn consumed.

The demand for these produces far exceed the supply but what is evident is that the agro-parks have produced and with plans to expand the project the gap should be reduced further.

Performances of agro-parks internationally

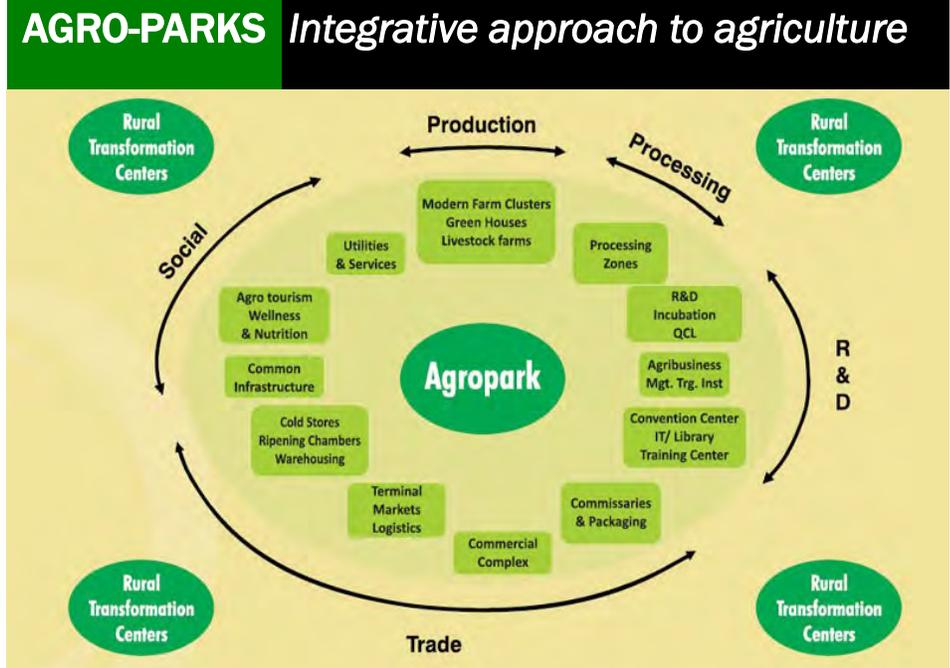
Two countries that have made significant investment in agro-parks are The Netherlands and Mexico. The Netherlands are considered to be the pioneers

of agro-parks and have invested heavily in modernizing their parks and making them efficient. As at 2014, they have had four fully operational agro-parks of differing sizes from 45 hectares to over 20,000 hectares. Their model of agro-parks is one of clustering by using technology so as to minimize the area that the agro-parks take up. So, for example, they rear pigs in high rise buildings and cows in houses. The result? In 2014, they were ranked number 1 in global exports for horticulture and vegetables and third in both dairy and animal, plant oils and fats.

Mexico's agropark industry is of a smaller scale than that of The Netherlands but they have been exploring ways to increase their production primarily using greenhouse technology. One city in Mexico, Queretaro, is now looking at launching their second stage of agro-parks – 528 hectares of land for greenhouses, warehouses, green areas and a residential area for workers. In the first stage, the project successfully delivered 2400 jobs, servicing 11 national and international agricultural companies using only 295 hectares of land. Another city, Jalisco, has three agro-parks that have been successful in job creation and adoption of agricultural practices that have generated excellent returns with healthier crops and decreased risk of pests and diseases.

Competition concerns with agro-parks

Imagine, if you will, a hypothetical case where there are two suppliers of irrigation services in the market in Jamaica. The suppliers supply irrigation services to farmers who work in the agro-parks. If both irrigation service suppliers decide that they are not going to compete with each other, but divide the island between themselves. In these separated markets, the suppliers are now the only suppliers of irrigation services. They decided to do this because they wanted to be assured that when they increase their prices they will not have any enterprise to compete with them and farmers have nowhere else to go but to them. This is



but one way in which there could be harm to competition in the agro-park chain. This harm could be compounded even more if the enterprises were to merge without any safeguards to prevent the new firm from abusing its dominant position.

From the standpoint of food security, which the government announced to be one of its objectives, lack of competition in the agro-park chain (from inputs into production to the sale of output) could have serious welfare effects on both the consumers and the farmers. For real world evidence of anti-trust cases in agriculture that affected both consumers and farmers' welfare we turn to Evenett's and Jenny's (2004) study of Sub-Saharan countries. Anti-trust cases included: a vertically-related monopoly in the Malawi sugar sector; a miller cartel in Zambia; price fixing and market sharing in the fertilizer market in Kenya; a buyer cartel in the Zimbabwean cotton industry; and a sugar cartel in South Africa. In our local case all these are possible and more. For example, it can easily be shown that if an exclusive deal was to be struck between agro-parks and private investors it could be harmful to competition in the economy especially if there are restrictions

on importation of the goods being produced in the agro-park. So, while the government's goal of import substitution and food security are being satisfied it must not be done in a manner that harms the welfare of farmers and consumers.

Conclusion

The concept of agro-parks is now a reality and the results so far have been positively encouraging. The goals of government of food security and import substitution can be realized if these agro-parks are scaled and efficiently operated.

One should, however, be concerned about the potential of harm to competition where agroparks are concerned because of the impact it may have on consumer welfare as well as that of farmers and also on the effectiveness of government policies. These harms are wide and varied and the island's competition authority is mindful of this. As we look to plant our way to economic growth and food security and out of debt into a stable economy, let us not forget that healthy competition in all areas of the agricultural chain is like good fertilizer to the soil of our produce.

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The Farmer or the Consumer: Who should benefit from market competition in agriculture?

By the Consumer Affairs Commission

Agriculture is an economic endeavour that involves the same amount of financial literacy, technological investment and shrewd negotiating that makes any other type of business prosper. As such, it also involves the same dynamic of competition that leaves only the fittest of businesses in the running. However, the primary aim of food production is feeding the masses. Mankind transitioned from hunter-gathering societies in order to gain greater control over its food supplies. Competition in agriculture should bear fruit not just for the business, but, more importantly, for their consumers. To determine whether competition in agriculture is bearing fruit is to discuss whether consumers are benefitting from the competitive behaviour of businesses in the agricultural sector. This article will discuss how competition presents itself in the agricultural sector, and evaluate its efficacy by examining the performance of providers in meeting the needs of consumers.

Competition in agriculture

Market competition refers to an economic system in which no monopolies exist. In such an economy, there are many players all acting independently and in their own self-interest. These players seek to use all the tools and strategies available at their disposal towards the aim of profit maximization. As such, market competition is the main driving force for higher productivity, lower cost and innovation. Internationally, competition in the agricultural sector has increased because of trade liberalization and technological advancement.

The use of agricultural-related technology has been very advantageous to farmers: it has improved the crop and livestock resistance to drought and diseases, giving farmers a competitive advantage in the market.¹ Additionally agricultural-related technology has enhanced the nutritional quality and shelf life of agricultural provisions.²

Ultimately, competition in business involves any activity of a business entity directed at limiting the profit of other companies, while maximizing their own. A business, even in agriculture, may do this in some basic ways. First, they may try to provide consumers with better products and services, by improving on what their competition already offers. Second, they may try to lure consumers away by providing new products, which meet previously underserved or unmet needs. These two are manifestations of innovation as a result of competition, which also involves introducing consumers to new ways to use existing products. If all else fails, they may simply reduce their prices, making those much needed goods and services more affordable. By selling new, better and cheaper products than their competitors do, the firms aim is to ensure that consumers relinquish their money.

Fruit for Farmers

Competition is expected to improve productivity within the market as measured by growth. Consequently, Jamaica has embarked on the transformation of the agricultural sector through a research-oriented, technological, and market-driven and private sector – led revolution, which would lead to high value productivity and national food security. PIOJ³ data suggests that the agricultural

sector has been growing and benefiting the Jamaican economy and society. The Agricultural, Forestry and Fishing industry grew by approximately 13.5% in 2016, accounting for 7.3% of Jamaica Gross Domestic Production (GDP). Additionally, the sector employs 17.74% (2015 est.) of the of Jamaica labour force.

As an agency of the Ministry of Industry, Commerce, Agriculture and Fisheries and Secretariat of the Distributive Trade, the Consumer Affairs Commission (CAC) holds regular meetings with members of the distributive trade to discuss the state of production and distribution of basic commodities such as sugar, rice and flour, ground provisions as well as chicken and other meats. Reports have been shared suggesting that animal husbandry—particularly chicken and pork—has been improving. Almost half the chicken meat is produced by small farmers, allowing the larger producers to begin exporting to other markets. Pork production has been encouraged by renewed investment from large investments, which has attracted so many players, that there were recent reports of oversupplies.

The Sweetest Fruit

Although there is evidence that competition in agriculture is benefiting the industry, the question remains whether that should be the goal. Usually, competition is viewed from the perspective of the businesses involved. However, the CAC maintains that, ultimately, competition is about consumer satisfaction. Businesses exist to make profit by meeting real or imagined needs of its consumer base. Therefore, the real goal of competition, and thus the best means of

evaluating its performance, should be the extent to which it is meeting the needs of consumers.

Food security though sustainable agricultural is paramount to achieving the goal of ending hunger. As a member of the United Nation (UN) Jamaica strives to achieve the 17 Sustainable Development Goals that tackle, inter alia, hunger. Food and nutritional security exists when citizens have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs. This is increasingly feasible as competition in the agricultural sector facilitates ways of ending hunger, achieving food security, improving nutrition and promoting sustainable agriculture. If agricultural competition is meeting these needs, then it may be considered fruitful.

Fruit for Consumers

Fruitful competition, therefore, should result in one of three outcomes. First, the market will provide their consumers with new products. One way this manifests is in the increased need in agriculture for a variety of value added product chains created by the manufacturing industry. The nutraceutical industry in Jamaica has seen resurgence as drugs, teas and beauty products made from indigenous plants have multiplied exponentially. Bamboo in Jamaica was once reserved for river rafting, yam sticks and temporary shade, are now being used to make ketchup, detox pills and new menu items like brown stew bamboo shoots. This innovation provides consumers with more choices for meeting their specific needs or concerns.

Competition in the agriculture industry is also improving the quality of produce on the market. This is most apparent in the area of ground provi-

sions such as tubers, yams, and vegetables. Farmers have begun to identify with the desire of consumer to live healthier lifestyles. In response, they are now growing food and raising animals in organic ways, relying less on synthetic chemical compounds for improved productivity and produce health. There is also a campaign via consumer groups to advocate for increased reformulation in the agro-processing industry to reduce sugar, salt, and fat content. This new push is so forceful that CAC has begun to disseminate data on how nutritious commonly purchased food items are. Consumers can visit the CAC's website and find data on the price and availability of certain food items, including how nutritious that item is given its food group and nutrient profile.

Competition should also see price reductions in the market. Price has declined in the industry due to oversupply in response to too many farmers seeking to benefit from uncommonly high prices. The tendency in the industry is for many to enter the market to reap the benefit of high prices for some products. Unfortunately, this effect of competition has yet to materialize in the Jamaican economy beyond this dynamic. Too many of the inputs such as machinery and chemicals are imported, making them susceptible to foreign exchange fluctuations. The poultry industry is considered one of the best performing agricultural industries, with companies exporting meat and eggs to other Caribbean islands. However, even with all this productivity, prices have only dipped in response to declines in input prices like oil and electricity.

A Few Bad Apples

This reliance on inputs from foreign imports betrays the fact that agricultural

competition still has room to grow. Jamaica still imports a significant portion of the food it consumes, rendering us ostensibly food insecure. Furthermore, international consumer groups such as Consumer International maintain that consumers still need to be concerned about genetically modified foods, and the levels of pesticides and hormones used in agriculture. The CAC has no evidence of the extent of this issue in Jamaica, but the dependence on imports means that local consumers are at risk of consuming potentially harmful food because of practices elsewhere. Until Jamaica's agriculture sector is able to wean us off of food imports, it cannot truly be said that the industry is bearing fruit.

Conclusion

So, is competition in agriculture bearing good fruit? We see that the sector is performing well over recent quarters, despite interruptions caused by natural disasters. Nonetheless, this serves as a reminder that to be truly fruitful, market competition in agriculture should seek to benefit consumers. Consumers should see more choice as producers innovate. Consumers should benefit from better choices as more healthful products hit the market. Although the effects might be short-lived, there should be instances when agriculture presents cheaper and thus more accessible products. The CAC will continue to educate and empower consumers to demand healthy choices at reasonable prices; and encourage competition in agriculture as a means of improving the business environment and, more importantly, the welfare of consumers. █



Endnotes

¹ Babu.A and Jambor.A. (2017).Competitiveness of Global Agriculture. International Food Policy Research Institute: http://research4agrinnovation.org/wp-content/uploads/2017/04/Synopsis_Jambor_Babu-002.pdf

² Abano .E.E and Buah J. N. (2014). Biotechnological approach to Improve Nutritional Quality and Shelf life of Fruits and Vegetables.International Journal of Engineering and Technology. 11(4), 2049 – 3444.

³ ESSJ Overview 2016 : http://www.pioj.gov.jm/Portals/0/Sustainable_Development/Overview%202016.pdf



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Viability of the Coconut Industry and the Importance of Innovation for Growth



The Coconut Industry Board (CIB) was established by the Coconut Industry Control Act Cap. 62 enacted in 1945.

The Board promotes the interests and efficiency of the coconut industry, encourages the production of coconuts and regulates the purchase, sale and exportation of coconuts as well as the importation of coconut products and substitutes.

The CIB falls under the ambit of the Ministry of Industry, Commerce, Agriculture and Fisheries.

The Status of the Industry

There are approximately 16,077 hectares of coconut with an estimated population of 3,568,760 coconut trees, producing 100.1 million nuts for the year.

The majority of coconut growers is small farmers with less than five acres under production. Coconut farming is concentrated in the eastern parishes and a number of new farmers in non-traditional areas in the western parishes.

In Jamaica, coconuts are used mainly for tender (jelly) coconut water, cold pressed coconut oil, coconut confectionaries and dry coconuts for home use.

The Board exports a small quantity of seed coconuts to Florida in the United States of America (USA) and the Bahamas and a few processors export coconut water, jelly and dry coconuts and coconut confectioneries to the United Kingdom, Canada and the USA.

Opportunities

The global market as well as the domestic market for importation of coconut products reveal the opportunities for the Jamaican farmers and manufacturers. The demand for coconuts has grown by more than 500% over the last three years.

In Jamaica, there are several bottlers of jelly coconut water, including the Board, who purchase approximately one million jelly coconuts per annum from local farmers for that purpose.

The global market size for coconut water was US\$1.66B in 2015 and for virgin coconut oil in 2016, it was US\$721M. The average price of coconut oil in Europe (CIF Rotterdam) for the month of February 2017 was US\$1,719 per metric tonne, up by 41.4% when compared to February 2016 and for coconut milk in 2015 was US\$.8B with a projected market growth rate of 15.55% by 2020.

The average price in February 2017 was US\$2,528 per metric tonne for desiccated coconut, US\$336 per metric tonne for coconut shell charcoal and US\$110 per metric ton for coir fibre.

There are other opportunities for growth of the sector in value-added products, that is, coconut water as a refreshing health and sports drink, coconut sugar, coconut milk, coconut cream, personal care and beauty products, nutraceuticals and activated charcoal.

Jamaica is poised to increase foreign exchange earnings from coconuts and coconut products, while increasing employment and economic growth among our farmers and processors.

All parts of the coconut can be used; the Board has invested in a coconut shredding machine to process husks, which are normally disposed of, into coconut fibre and coir. This can be replicated throughout Jamaica among farmers.

Threats

The challenges facing the Jamaican coconut industry include natural disasters, such as, windstorm and drought, praedial larceny, pests and disease. Lethal yellowing disease is the most devastating disease which affects coconuts in Jamaica. Despite these challenges, through innovation the industry has survived and has the capacity to increase production.

Innovation

The viability of the coconut industry in Jamaica resides with the Board in collaboration with industry stakeholders.



Accepting that innovation is necessary for growth of the industry, the CIB established its Research Department in 1959 which has since undertaken research and development in agronomy, plant pathology and plant breeding.

Through research:

- ♦ The Board continues its search for high-yielding disease resistant coconut planting material and has introduced many varieties and formulated several hybrids. The most successful commercial hybrid to date, the Maypan, boasts high fruit sets and large nut size. New hybrids, namely, Brapan and Maybraz, have been developed and are being tested.
- ♦ Jamaica has the largest coconut field genebank in Latin America and the Caribbean. To effectively manage this germplasm collection, the Board is exploring the use of molecular markers over classical field data to identify the respective varieties.
- ♦ Candidate molecular markers are being developed for the more efficient identification of resistance among promising varieties. This will reduce the length of field assessments.
- ♦ The Board identified a subset of Malayan Yellow Dwarf through micro-satellite technology and seedlings have been planted in lethal yellowing "hot spots" to test their resistance to the disease. Results are promising so far and steps are being taken to increase its population to distribute to our coconut farmers.
- ♦ The Board uses advanced molecular methods, example, real-time PCR, which facilitate the identification of lethal yellowing disease in affected samples.
- ♦ Experiments are conducted in crop management with novel fertilizer blends and organic materials to improve production of coconuts.
- ♦ Experiments to determine the causes of poor coconut germination are also being conducted.
- ♦ The Board in an effort to expand the supply of planting material, is conducting research on micro propagation (tissue culture) in collaboration with the University of the West Indies. This technique is commonly used to produce multiple plants from a single cutting (explant) of a parent plant.
- ♦ The Board is acquiring lands for the establishment of additional seed gardens and nurseries to increase seed and seedling production.
- ♦ The Board has adopted "the Michael Black Approach" in controlling lethal yellowing disease by cutting and burning infected trees at the first sign of the disease. Farmers are encouraged to replace each tree by planting another coconut seedling.

The Board continues to assist registered farmers and encourage growth in the industry through its planting programmes under which registered farmers are given, free of cost, seedlings, fertilizer for 80 per cent of the seedlings granted, weed control grant and ongoing technical assistance.

In order to achieve innovation for growth, the objectives of the Board in its strategic Business Plan over the next ten years contemplates:

- ♦ Investing in agro-processing operation and increasing value-added products in coconuts by establishing factories with the latest technologies for the processing of bottled coconut water and virgin coconut oil.
- ♦ Engaging private investors in the industry by developing an investment opportunity profile plan and implementing investment promotion seminars. —

FTC Statistics

Number of complaints received by the FTC
during the period April 1, 2015 - September 30, 2017

PRODUCTS AND SERVICES	Year 2015/2016	Year 2016/2017	April-September 2017
Automobile	21	15	4
Business Practices	-	-	1
Clothing/Accessories & Textiles	2	2	1
Computer	1	-	-
Construction/Home Repair Supplies	-	3	-
Education	9	3	3
Energy	2	1	1
Financial Services	11	14	3
Food/Supplements & Beverages	4	2	-
Funeral Supplies	-	-	-
Gaming & Contest	-	-	-
Gardening Supplies/Equipment & Horticultural Products	-	-	-
Government Services	1	-	-
Household Appliances & Accessories	6	5	2
Household Furnishings	-	2	1
Insurance	2	1	-
Leisure & Recreation	2	-	-
Medical Supplies, Services & Devices	2	-	-
Office Furnishings/Equipment & Supplies	-	1	-
Personal Care	-	-	-
Petroleum Products & Accessories	-	-	-
Professional & Specialist Services	5	1	1
Real Estate	-	1	-
Telecommunications	22	16	10
Tourism	-	-	-
Transportation Systems	1	-	-
Utilities	2	1	-
Other ¹	4	2	-
TOTAL	97	70	27

¹**Other** - Baking, Payment Services, Legal Services, Agricultural Products & Agro-Processing, Hardware & Electrical Tools, Media, Packaging, Publications and Industrial Machinery & Products.

7 Pillars of SMART INVESTING

It is incumbent on each investor to think and do the necessary due diligence before investing. Here are seven investment tips from the Financial Services Commission of Jamaica:

1.

Determine your investment risk profile

To better understand yourself as an investor, consider your risk tolerance, investment knowledge, investment objectives, income, and investment time horizons. Work with a licensed investment advisor to help you determine the investments that best match your goals.

2.

Start early

Investing over longer time periods allows you to take advantage of "compounding". This is one of the best ways to make your money work for you. Compounding is essentially money multiplying itself by earning on top of the return.

3.

Invest consistently

Taking advantage of the opportunity to invest smaller amounts on a consistent basis is often easier than making a large, lump-sum contribution. A regular investment plan allows you to choose when and how often you make contributions and ensures you make investing a priority. Practice the concept of "dollar-cost averaging", whereby you invest a fixed amount at regular intervals over a long period in your chosen investment product(s) – this will lessen the risk of investing a large amount in a single investment at the wrong time.

4.

Work on diversifying your portfolio

Spreading your assets across a wide range of investments is an effective way to reduce risk and increase potential returns over the long term.

5.

Monitor your portfolio

Investing makes it possible for your money to work for you. So keep a close watch on it by comparing the performance of your investments with similar products over the same period of time.

6.

Choose the Right Professional

Selecting the right financial professional is as important as choosing the right investment instrument. Thoroughly evaluate the background of any financial professional with whom you intend to do business and ensure that they are licensed and registered to carry out the business and services that they are offering.

7.

Begin with the end in mind

Whether you're investing towards your education, a car, a family home, your children's education or your retirement, successful investing involves making choices that meet your unique needs today and your financial goals for the future. Consider your personal circumstances and the time horizons of your goals when selecting an investment instrument.



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