

REVIEW OF OPERATIONS OF  
THE FAIR TRADING COMMISSION  
FOR THE 1996/97 FINANCIAL YEAR

Fair Trading Commission  
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## **REVIEW OF OPERATIONS OF THE FAIR TRADING COMMISSION FOR THE 1996/97 FINANCIAL YEAR**

As at March 31, 1997, the Fair Trading Commission investigated a total of five hundred and forty-seven (547) complaints. Of this number three hundred and eighty-seven (387) have either been resolved or closed. This represents 70.7% of the total number of complaints, an increase of 3.7% over the similar period for the previous year. Some one hundred and sixty complaints (160) representing 29.3% are either still being investigated or proceeding toward resolution.

Following its established trend, since the inception of the FTC, misleading advertising continues to attract the largest number of complaints totaling some two hundred and thirty-four (234) representing 43.3% of all complaint categories. The Commission has also received a total of fifty-five (55) *Request for Information cases* and forty-one (41) *Request for Opinion cases* (see annex 1 for details on the matters investigated for the period under review. The Commission has also received a total of one hundred and seventy-nine (179) complaints categorized as not falling under the Fair Competition Act (FCA). These complaints though not falling within the purview of the FTC have, however, been referred to the appropriate bodies for action. In these instances, FTC may from time to time request a report of the status of these matters.

A majority of the complaints received relate to appliances, furniture, same day loans companies, insurance, real estate and motor vehicles industries. With respect to the same day loan companies, the FTC was prompted to undertake investigations into the alleged questionable practices of these money lending institutions. FTC consequently devised loan disclosure documents to assist companies in providing all the relevant information on the loan agreements they are about to enter into. Both companies have agreed to employ the loan disclosure statement/guidelines for use in their daily operation.

### **MAJOR CASES INVESTIGATED**

The Commission is continuing to carry out its investigative role and has launched investigations into the practices of the following entities to ascertain whether the practices complained of were in breach of the Fair Competition Act. The cases are as follows:

#### **LA CASA DEVELOPMENTS**

FTC has received several complaints alleging misleading advertisement by La Casa Developments in relation to the non-delivery of housing units within the projected delivery period. Upon request of a refund of the deposits, the complainants were advised that there would be a deduction of \$10,000.00. This deduction represents what was described as a cancellation fee. The complainants were not apprised of this fee beforehand.

FTC staff initiated an investigation into the allegations and found that the company had, by its actions, misled consumers as the units were not yet ready for delivery despite prior representations. The staff found also that by failing to inform the complainants of the existence of a cancellation fee, the company failed to disclose material information to the consumer.

FTC met with the company in an effort to negotiate a settlement. Some complainants have since been refunded their deposits in full and FTC continues to pursue the matter in relation to other complainants who are yet to receive a refund of the "cancellation fee."

#### **PORT AUTHORITY (PA) & TOURISM PRODUCT DEVELOPMENT COMPANY**

FTC's investigation of complaints against Port Authority (PA) and the Tourism Product Development Company (TPDCO).

This complaint involves allegations that the PA allowed certain companies access to the Ocho Rios Port while restricting the access of other companies. Such conduct would be in breach of Section 17 2(e) of the Fair Competition Act (FCA).

With respect to TPDCO, an agreement was reached on the terms and condition for the final tender document in relation to transporting cruise ship passengers from the Ocho Rios pier specifically:

1. Allowing all persons who meet the quantitative and qualitative requirements to tender.
2. Participation in freelance transportation of passengers will not be tied to participation in the pre-booked market.
3. To put in place a system for appeal.

The document is to be revised by TPDCO in keeping with this Agreement and is then to be sent back for the FTC's final review and approval.

#### **WESTERN DATA**

FTC investigation of a complaint against TOJ submitted by Western Data. The complainants allege that TOJ has made changes to the interconnect facilities used by Jamaica Digiport International and that these changes are anti-competitive and have had a detrimental effect on the companies operating in the Montego Bay Freezone.

The companies claim that they decided to invest in Jamaica because of the promise of reasonably price communication facilities and suggest that this promise has been broken.

The complainants allege that TOJ's action constitutes an abuse of its dominant position which is illegal under the FCA. However, the staff concluded that TOJ's action in relation to Jamaican Digiport International, did not constitute abuse of dominance as the Economists were unable to find substantial lessening of competition, a prerequisite under Section 21 of the FCA.

## **SAME DAY LOAN COMPANIES**

FTC received complaints alleging misleading representation against Ocean Blue Fisheries and Ranspen Finance Companies. The complaints, specifically, focused on:

1. The amount of interest which loans from these companies attract, and
2. The penalties that arise from failure to make timely payments.

Misleading Representations encompass material omissions and it is alleged that the complainants were not fully informed of all the material terms and conditions of their loan arrangement.

FTC convened several meetings with the finance companies in which the staff explained the need for full disclosure of material information. Documents aimed at providing all the relevant information pertaining to loans were drafted by the FTC staff and discussed with the representatives from the finance companies. After much negotiation, the companies agreed to use the revised loan disclosure statements and guidelines recommended by the FTC.

The Commission also brought to the attention to the Minister of Finance, the need for legislation for these finance companies. At the time, the lending activities of these companies' were not regulated by any Act or particular agency. However, since that time in accordance with our recommendation, steps have been taken toward passing some laws which will protect the unsuspecting public from these institutions with usurious lending rates.

## **AUTHORIZATIONS**

The following entities have applied for authorization from the Commission and are currently being investigated.

## **BANANA BOARD**

The Banana Board has sought authorization under Section 9 of the Act for the continued operation of its Banana Insurance Scheme.

The staff has reviewed the response of the All Island Banana Growers Association (AIBGA) to the FTC's survey of banana farmers. However, a sampling of surveys from individual banana farmers will be sought and analyzed before the Economics department submits the final draft of its report to the Commissioners.

## **SPIRIT POOL (SP)**

The Spirits Pool is comprised of a group of distillers who fix prices for the sale of spirits and make arrangements for the collective marketing of the product.

The staff of the FTC is now conducting a survey among the signatories to the Spirits Pool Agreement to determine if there is a public benefit to be derived from SPAL's activities and whether or not it outweighs the anti-competitive effect, if any, of the agreement.

The information received from the survey is now being reviewed and analyzed, and if necessary, a meeting will be convened with all the parties concerned to conclude the analysis.

### **COCONUT INDUSTRY BOARD (CIB)**

Application for Authorization pursuant to Section 29 of the FCA.

CIB sought advice on its continued operations in respect of the FCA. The staff invited CIB to discuss an application for Authorization. Procedures sent to CIB.

Meeting held with CIB. CIB requested a private hearing before the Commissioners pursuant to Section 8 of the FCA as opposed to the public hearing required under the authorization provision.

FTC asked that the Board substantiate its request. CIB responded that the public hearing may induce persons to avoid paying CIB's cess. A decision is pending.

### **FTC INITIATED INVESTIGATIONS**

As part of the broad mandate, given to the FTC by virtue of Section 5 of the FCA, to undertake studies and publish reports and information regarding matters affecting the interests of consumers, the FTC has undertaken the following investigations. Although the conduct complained of does not always fall squarely under the FTC's jurisdiction, the FTC is committed to investigate and produce advisory opinions in an attempt to ensure that the consumer can make informed choices.

### **NATIONAL HOUSING CORPORATION LIMITED (NHC)**

Complaint against NHC regarding Sale Agreement's penalty provisions for charging interest on the balance of the purchase price when the purchaser is deemed to be in possession, but prior to receipt of title and disbursement of the mortgage funds. These allegations suggest that NHC, when imposing interest in these circumstances, could be conducting business in a manner that is unreasonable and unfair to the Jamaican consumer.

FTC's staff contacted the Registrar of Titles to obtain information to enable staff's understanding of the title application process. Staff learnt that several factors resulted in the delays including the legal provision relating to building contracts. The investigation continues apace.

## **PETROLEUM RETAIL INDUSTRY**

FTC initiated investigation of the Petroleum Retail Industry.

The FTC has initiated an investigation to determine if the new requirements in the oil companies' contracts with its dealers, are anti-competitive in nature.

The staff found no breach of FCA. However, the staff prepared a proposal which addressed the issue presently arising in the Petroleum Retail Industry. This was submitted for the consideration of the Minister of Public Utilities in January 1997, who subsequently sought the FTC's assistance. However, the staff noted that USA and Australia had addressed similar problems in those respective jurisdictions by passing specific legislation to govern the petroleum industry. The staff recommended that consideration be given to enacting similar legislation for Jamaica.

Shell asserted that its conduct in respect of its dealers accorded with the practices obtaining in the USA and Australia. Pursuant to Shell's claim that its conduct is internationally acceptable, the FTC undertook a comparative review of Shell's conduct. The staff submitted a report to the Minister of Public Utilities in which it concluded that Shell did not act in accordance with international petroleum legislation in all instances as it had claimed. The matter is now being negotiated between the JGRA and Shell under the supervision of the Minister of Public Utilities and Transport.

## **GENERAL INSURANCE INDUSTRY**

In response to several complaints against the insurance industry regarding, primarily:

1. Insufficient disclosure to the policy holder regarding the principle of indemnity;
2. Settlements that are substantially less than the amount the article is insured for.

The FTC has initiated an investigation of the general insurance industry. The investigation has thus far called upon the resources of the Jamaica Association of General Insurance Companies and the Superintendent of Insurance. The staff of the FTC is currently still investigating.

## **FTC'S RELATIONSHIP WITH OTHER REGULATORY BODIES AND CONSUMER GROUPS.**

FTC has over the period under review forged a closer working relationship with the other consumer and regulatory bodies. Of special note is the relationship developed with the office of the Consumer Affairs Commission (CAC). The FTC has also developed a closer working relationship with the utility regulatory bodies, the office of the Ombudsman for Public Utilities and the Office of Utility Regulations.

## **PUBLIC EDUCATION PROGRAMME**

FTC has continued its aggressive public education drive over the period under review with the highlights being the production of articles for a newsletter, aimed at providing information for individuals within target sectors. These sectors include students at the tertiary level of education, retail stores, Private Sector Organization of Jamaica and the legal fraternity.

The FTC has also within the period, launched its first national essay competition for secondary schools aimed at sensitizing, informing and ultimately trying to identify the level of knowledge of the Fair Competition Act (FCA) within these schools among students at the fifth and six form levels, the ultimate aim being to develop and implement an educational programme for tertiary institutions across the island.

## **ACTIVITIES PLANNED FOR 97/98 FINANCIAL YEAR**

For the financial year 97/98, the FTC will continue to forcefully pursue its mandate to ensure that competition is maintained and enhanced in the Jamaican marketplace. The FTC will therefore, maintain its vigilance in identifying and investigating anti-competitive practices such as abuse of dominant position, exclusive dealing, price fixing and other restrictive market practices.

The Commission intends to continue its public education programme for the financial year 97/98. Specifically, FTC will be producing and placing radio spots, highlighting its policies on consumer matters relating to such issues as warranties, refunds and their general rights and responsibilities in the marketplace. It is also anticipated that the FTC's newsletter will be ready for dissemination to the specified target groups.

It is also intended that during the year, the Commission will host a number of seminars. Among those being planned is one which will clarify how the FCA deals with the issue of tendering. This seminar is aimed at presenting FTC's position on how the FCA treats tendering, bidrigging and other related issues. Among bodies to be invited to participate in this seminar are the Contractor General, Ministry of Industry, Investment & Commerce, Ministry of Construction, Jamaica Institute of Architects and Utility companies.

FTC will continue to take a pro-active approach in the area of consumer protection and will therefore, aim to further strengthen its existing relationship with other regulatory bodies in an effort to ensure that consumers are provided with the necessary protection needed.


Cognizant of its mandate the FTC is, this financial year, aiming to become more involved in the marketplace, bringing to bear the full weight of the law on repeated offenders and companies who demonstrate an unwillingness to co-operate with the Commission.

**SUMMARY OF COMPLAINTS**

APRIL 1, 1996 - MARCH 31, 1997

<b>BREACH</b>	<b>CURRENT CASES</b>	<b>RESOLVED/CLOSED</b>	<b>TOTAL</b>
Misleading Advertisement - MA	74	160	234
Abuse of Dominance - ADP	4	2	6
Sale Above Advertised Price - SAP	2	3	5
Tied selling - TS	2	6	8
FTC Investigations - FTCINV	5	2	7
Request for Information - REQINFO	14	41	55
Request for Opinion - REQOPIN	13	28	41
Complaint not under the Act - NA	37	142	179
Restrictive Practice - RP	2	3	5
Offence against Competition - OAC	7	--	7
<b>TOTAL</b>	<b>160</b>	<b>387</b>	<b>547</b>





**FAIR TRADING COMMISSION  
AUDITED  
FINANCIAL STATEMENTS  
YEAR ENDED 31ST MARCH, 1997**

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**AUDITOR GENERAL'S REPORT**  
**ON THE FINANCIAL STATEMENTS OF**  
**THE FAIR TRADING COMMISSION**

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I have examined the financial statements set out on pages II - VIII and have obtained all the information and explanations which I required.

My examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as I considered necessary.

In my opinion, proper accounting records have been kept and the financial statements which are in agreement therewith, give a true and fair view of the state of the Commission's affairs at the 31st March, 1997 and of the results and cash flows for the year then ended and comply with the provisions of Section 13 - (1) of the Fair Competition Act, 1993.

*H. Strachan*

AUDITOR GENERAL

12/9/97


FAIR TRADING COMMISSION

II

BALANCE SHEET  
AS AT 31ST MARCH, 1997

	<u>Notes</u>	<u>1997</u>	<u>1996</u>
		\$	\$
<b><u>Fixed Assets:</u></b>			
At Cost Less Aggregate Depreciation	(2b & 4)	2,598,279	3,332,055
 <b><u>Current Assets:</u></b>			
Receivables		131,913	17,106
Prepayments		77,608	75,407
Fixed Deposits		1,012,110	663,824
Cash & Bank Balances		2,724,039	1,166,775
		<u>3,945,670</u>	<u>1,923,112</u>
 <b><u>Current Liability:</u></b>			
Accounts Payable		42,609	53,680
		<u>42,609</u>	<u>53,680</u>
Net Current Assets		<u>3,903,060</u>	<u>1,869,432</u>
<b>NET BOOK WORTH</b>		<u><u>6,501,339</u></u>	<u><u>5,201,487</u></u>
 <b><u>REPRESENTED BY:</u></b>			
Capital Fund	(5)	2,598,279	3,332,055
Revenue - Accumulated Surplus		<u>3,903,060</u>	<u>1,869,432</u>
		<u><u>6,501,339</u></u>	<u><u>5,201,487</u></u>

 CHAIRMAN

 COMMISSIONER

The accompanying notes form an integral part of these financial statements and must be read in conjunction with them.

FAIR TRADING COMMISSION

III

DETAILED INCOME & EXPENDITURE ACCOUNT  
YEAR ENDED 31ST MARCH, 1997

	<u>Notes</u>	<u>1997</u>	<u>1996</u>
		\$	\$
Income:	(2c)		
Government Grant		16,898,813	12,911,936
Other Income		561,971	448,697
Out of Court Settlement		261,037	800,000
Transfer from G.O.J. & USAID Capital Grant		<u>926,554</u>	<u>800,768</u>
		18,648,375	14,961,401
Expenses:	(2c)		
Salaries & Other Staff Costs		9,995,781	7,501,849
Travelling & Transportation		1,177,085	726,093
Rental		1,492,570	1,205,439
Utilities		109,968	115,282
Professional Services		2,042,770	2,461,460
Printing, Stationery, Postal & Cable		210,271	229,619
Office & General Expenses		169,198	151,896
Repairs & Maintenance		49,532	28,181
Depreciation		926,554	800,768
Official Entertainment		32,772	98,062
Staff Training & Retreat		48,000	143,726
Bank Charges		39,173	48,083
Miscellaneous Expenses		191,285	448,075
Insurance		<u>129,787</u>	<u>185,810</u>
		<u>16,614,747</u>	<u>14,144,343</u>
Net Surplus For The Year		2,033,628	817,058
Surplus At The Beginning Of The Year		<u>1,869,432</u>	<u>1,052,374</u>
<b>Accumulated Surplus At The End Of The Year</b>		<b><u><u>3,903,060</u></u></b>	<b><u><u>1,869,432</u></u></b>

The accompanying notes form an integral part of these financial statements and must be read in conjunction with them.

**FAIR TRADING COMMISSION**

**IV**

**STATEMENT OF CASH FLOWS  
YEAR ENDED 31ST MARCH**

	<u>1997</u>	<u>1996</u>
	\$	\$
<b>Cash Flows From Operating Activities:-</b>		
Net Surplus Per Accounts	2,033,628	817,059
Adjustments to reconcile income for the year to net cash provided by operating activities:		
Depreciation	926,554	800,768
Transfer from G.O.J. & USAID Capital Grant	(926,554)	(800,768)
	<u>2,033,628</u>	<u>817,059</u>
(Increase)/Decrease in Current Assets		
Accounts Receivable	(114,807)	(14,106)
Prepayments	(2,201)	23,552
Increase/(Decrease) in Current Liability		
Accounts Payable	<u>(11,070)</u>	<u>(144,763)</u>
Net Cash Provided By Operating Activities	<u>1,905,550</u>	<u>681,742</u>
<b>Cash Flows From Investing Activities:-</b>		
Purchase Of Fixed Assets	<u>(192,778)</u>	<u>(1,215,798)</u>
Net Cash Used In Investing Activities	<u>(192,778)</u>	<u>(1,215,798)</u>
<b>Cash Flows From Financing Activities:-</b>		
Capital Fund	<u>192,778</u>	<u>1,215,798</u>
Net Cash Used In Financing Activities	<u>192,778</u>	<u>1,215,798</u>
<b>Net Increase In Cash And Cash Equivalents</b>	1,905,550	681,742
<b>Cash And Cash Equivalents At The Beginning Of The Year</b>	<u>1,830,599</u>	<u>1,148,857</u>
<b>Cash And Cash Equivalents At The End Of The Year</b>	<u><u>3,736,149</u></u>	<u><u>1,830,599</u></u>
<b>Represented By:</b>		
Cash & Bank Balances	2,724,039	1,166,775
Fixed Deposits	<u>1,012,110</u>	<u>663,824</u>
	<u><u>3,736,149</u></u>	<u><u>1,830,599</u></u>

**NOTES TO THE FINANCIAL STATEMENTS  
YEAR ENDED 31ST MARCH, 1997**

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1. **IDENTIFICATION:**

- (a) **The Commission:-**  
The Fair Trading Commission was established to enforce the regulations of the Fair Competition Act which was enacted 9th March, 1993 and became effective on the 9th September, 1993.
- (b) **Main Objectives:-**  
The main activity of the Fair Trading Commission is for the maintenance and encouragement of competition in the conduct of trade, business and services, with a view to provide consumers with competitive prices and market choice.
- (c) **Taxation:-**  
Government grant receipts are not taxable income. Other receipts are exempt from Income Tax, as per Section 12(h) of the Income Tax Act.

2. **SIGNIFICANT ACCOUNTING POLICIES:**

- (a) **Accounting Convention:-**  
These financial statements are prepared under the Historical Cost Convention and are expressed in Jamaican dollars.
- (b) **Depreciation:-**  
Depreciation is calculated on the straight line basis at rates calculated to write off the assets over their estimated useful lives.
- Rates applied in these financial statements are:
- |                      |     |
|----------------------|-----|
| Motor Vehicles       | 20% |
| Furniture & Fixtures | 10% |
| Computer Equipment   | 25% |
- (c) **Income & Expenses:-**  
Income and expenses are recorded on the accruals basis. Income refers to subvention from Government of Jamaica. Other income refers to interest gained from Certificates of Deposit, G.C.T refund and photocopying charges. Capital Funds and Grants are not shown in the Income & Expenditure Statement.

3. **PENSION FUND**

The company operates a contributory pension scheme for its employees, with benefits based on the employees' earnings during recognised service. The Fund Balance as at March 31, 1997 is \$3,255,044.07,.

NOTES TO THE FINANCIAL STATEMENTS  
YEAR ENDED 31ST MARCH, 1997

4. FIXED ASSETS:

	Motor Vehicles	Furniture Fixtures & Equipment	Furniture Fixtures & Equipment	Total
	<u>GOJ</u>	<u>USAID</u>	<u>GOJ</u>	
	\$	\$	\$	\$
Cost:				
1st April, 1996	1,168,974	1,646,746	516,335	3,332,055
Additions	0	149,850	101,187	251,037
Disposals	0	56,386	1,873	58,259
31st March, 1997	<b>1,168,974</b>	<b>1,740,210</b>	<b>615,649</b>	<b>3,524,833</b>
Depreciation:				
Current Charges	329,359	518,637	78,558	926,554
31st March, 1997	<b>329,359</b>	<b>518,637</b>	<b>78,558</b>	<b>926,554</b>
Net Book Value:				
31st March, 1997	<b>839,615</b>	<b>1,221,573</b>	<b>537,092</b>	<b>2,598,279</b>
31st March, 1996	1,168,974	1,646,746	516,335	3,332,055

5. CAPITAL FUND:

Transfers are made from capital grants to the income account of amounts equivalent to the annual depreciation charged for those fixed assets acquired from capital grants and are analysed as follows :

(a) Government Of Jamaica:-

Balance at beginning of year	1,685,309	
Net Funds received during the year	99,314	
Less transfer to Income & Expenditure Account	407,917	
Balance at 31st March, 1997		1,376,706

(b) USAID:-

Balance at beginning of year	1,646,746	
Net Value of Equipment received during the year	93,464	
Less transfer to Income & Expenditure Account	518,637	
Balance at 31st March, 1997		1,221,573

**2,598,279**

FAIR TRADING COMMISSION

VII

SCHEDULE OF EXPENSES  
YEAR ENDED 31ST MARCH, 1997

	<u>Notes</u>	<u>1997</u>	<u>1996</u>
		\$	\$
<b>Salaries &amp; Other Staff Costs:</b>			
Salaries		6,805,116	5,380,249
Salaries (Temp) & Wages		259,773	156,559
Clothing & Robing Allowances		334,362	202,967
Library Allowance		80,539	0
Meal Allowances		175,407	172,729
Overtime Allowances		43,699	97,162
Statutory Contributions		585,706	394,886
Health Plan		224,203	153,038
Pension Plan Contribution	(3)	644,934	385,895
Gratuity		842,043	558,364
		<u><b>9,995,781</b></u>	<u><b>7,501,849</b></u>
<b>Travelling &amp; Transportation:</b>			
Motor Vehicle Allowances		838,083	507,509
Mileage Allowances		3,546	0
Subsistence (Local)		9,520	0
Cab Fare		10,946	9,567
Petrol & Oil		74,946	77,027
Repairs & Maintenance - Motor Vehicles		116,270	122,679
Air Fare		52,778	2,813
Subsistence (Foreign)		70,997	6,498
		<u><b>1,177,085</b></u>	<u><b>726,094</b></u>
<b>Rental:</b>			
Rental Of Building		1,436,803	1,147,585
Rental Of Machinery		13,197	21,638
Other Rental		42,570	36,216
		<u><b>1,492,570</b></u>	<u><b>1,205,439</b></u>
<b>Utilities:</b>			
Electricity		82,055	80,156
Telephone & Fax		27,913	35,126
		<u><b>109,968</b></u>	<u><b>115,282</b></u>



FAIR TRADING COMMISSION

VIII

SCHEDULE OF EXPENSES  
YEAR ENDED 31ST MARCH, 1997

	<u>1997</u>	<u>1996</u>
	\$	\$
<b>Professional Services:</b>		
Auditing Fees	3,000	0
Advertising & Public Relations	101,360	481,061
Insurance	129,787	185,810
Consultancy	161,410	417,241
Consulting (Legal Fees)	627,000	683,158
Stipend (Commissioners)	1,150,000	880,000
	<u>2,172,557</u>	<u>2,647,270</u>
<b>Office and General Expenses</b>		
Sundry Expenses	191,285	448,075
Staff Training & Retreat	48,000	143,726
Bank Charges	39,894	48,083
Stationery & Subscriptions	255,817	272,727
	<u>534,996</u>	<u>912,611</u>