



**REVIEW OF OPERATIONS**

**OF THE**

**FAIR TRADING COMMISSION**

**1997 APRIL 01–1998 MARCH 31**

# **REVIEW OF OPERATIONS OF** **THE FAIR TRADING COMMISSION** **1997 APRIL 01 - 1998 MARCH 31**

## **INTRODUCTION**

Over the period 1997 April to 1998 March a total of 531 new cases were received by the Fair Trading Commission (FTC) with 463 being resolved or closed (See Annex I for details of cases investigated).

Misleading Advertising represented the main type of complaint investigated by the FTC accounting for 35% of all new cases received over the period under review. The FTC has taken an aggressive position with regards to the interpretation of this particular section of the Fair Competition Act (FCA) and in keeping with this approach successfully carried out investigations into allegations of misleading representation within the appliance/furniture, motor vehicle, general insurance and financial sectors among others.

During the period, investigations were also carried out into alleged breaches of Section 20 of the FCA in relation to Abuse of Dominant Position (ADP), as well as allegations relating to Double Ticketing, Restrictive Practices and Tied Selling. The Commission also completed its review of several matters for which our opinion was sought or information requested.

## **MAJOR CASES INVESTIGATED**

The Commission continues to seek, in the first instance, amicable resolutions to complaints investigated. Court action is however, initiated in instances where attempts at arriving at out-of-court resolutions have not been successful. The following matters were the subject of court action during the period under review :

### **PREMIER FOOD COMPANY (POPEYES FAMOUS FRIED CHICKEN & BISCUITS)**

The staff of the FTC received and investigated a complaint alleging misleading advertising by the fast food restaurant in the advertising of its "free lunch" promotional campaign.

The FTC filed an action in court against the company on the basis that they had omitted material information from their promotion of the "free lunch" special, and in so doing the representation which they made to the public may have been misleading.

Subsequently, the company agreed to settle the matter out-of-court.

### **THE QUEEN V. MICHAEL VACCIANNA & CARIBBEAN HOUSING FINANCE CORPORATION LIMITED (CHFC)**

This matter concerned the failure of the CHFC to provide the FTC, in a timely manner, with certain information which the staff of the Commission requested as part of its investigation of a complaint against the company.

The complaint pertained to the CHFC's use of panel of attorneys and their willingness to accept an undertaking from a law firm which was not on the panel.

The matter was scheduled to go to trial in 1997 June. However, following the reading of a statement of apology on behalf of the Defendants in court, the Office of the Director of Public Prosecution (DPP) offered no evidence against CHFC and the case was settled. The CHFC has since provided the FTC with the information which had been requested.

### **THE JAMAICA STOCK EXCHANGE (JSE)**

Arising out of a complaint received against the JSE, staff of the Commission investigated the matter and concluded there was evidence to suggest that the JSE's conduct constituted an abuse of its dominant position.

Before the matter could be formally heard by the Commissioners, the JSE took the FTC to court claiming among other things, that the FTC did not have jurisdiction over the JSE, that the FTC had acted in breach of the constitutional provisions regarding separation of powers and freedom of association and had abused its statutory powers as well as the rules of natural justice.

The JSE contended that it was to be regulated only by the Securities Commission. The Securities Act, however, does not address competition issues and, therefore the position of the FTC is that, at best, both agencies exercise concurrent jurisdiction.

On 1997 July 4, judgement was handed down in favour of the FTC. The judge denied all the declarations sought by the JSE. The JSE has since filed Notice and Grounds of Appeal.

## **PUBLIC EDUCATION PROGRAMME**

The FTC continued to inform and educate the public on issues related to competition law and policy, during the period under review. Among the seminars conducted was one entitled "FTC seminar on Tendering and Bid-Rigging" which focused on the contract tendering process relative to sections 17 and 36 of the FCA which proscribes provisions of agreements having the effect of lessening competition and bid-rigging, respectively.

Presenters included representatives from the Incorporated Master Builders Association, Jamaica Developers Association, and the Contractor General Office. The main issues arising out of this seminar were subsequently summarized by the FTC staff and are the subject of collaborative review with the relevant parties concerned.

The second seminar, witnessed the collaborative efforts of the FTC, the Office of the Superintendent of Insurance (OSI) and the Jamaica Association of General Insurance Companies (JAGIC).

The seminar sought to address issues arising from complaints received by the FTC against the general insurance industry. Topics addressed by the panelists included, the roles and functions of the FTC and the OSI in relation to general insurance matters; the role and functions of key players in the general insurance industry e.g. brokers, agents, etc.; insurance for motor vehicles including the "deportee" motor vehicle; the principle of indemnity; prorated refunds and methods of valuation.

The FTC , in on-going dialogue with the major players in the general insurance industry, has made various proposals to address matters raised at this seminar as well as other issues of concern to the insuring public and will continue its dialogue with the main players within the industry.

Various press releases and advisories addressing issues such as unfair practices in the appliance and furniture retail industry, and the used car industry were also disseminated by the FTC during the period under review.

The first issue of the Commission's Newsletter was published in 1997 July and circulated to various interest groups .

### **PLANS FOR THE COMING YEAR**

The 1998/99 financial year will see the Commission initiating legal action against those entities which do not show a willingness to co-operate .

The Commission will also be undertaking reviews of applications for authorization from various commodity boards. Several matters relating to the operations of Cable & Wireless Jamaica Limited will also be the subject of review by the staff of the Commission in collaboration with the Office of Utilities Regulation.

Various workshops and seminars will be organized by the FTC to address consumer protection issues which are most frequently brought to its attention with particular focus on complaints such as those relating to the appliance/furniture and motor vehicle sectors.

A workshop is planned for judges and will focus on those sections of the FCA which are most likely to be pursued through the Court as well as the sections for which an understanding of the "economics" of competition is critical. Focus will be placed on sections, 17, 20 and 37 of the FCA which proscribes substantial lessening of competition, Abuse of Dominant Position and Misleading Advertising respectively.

Other activities will include the bi-annual publication and distribution of the FTC's Newsletter "Competition Matters", the distribution of flyers and brochures to schools as well as agencies of government such as offices of the Inland Revenue Department and Post Offices.

The FTC will also be establishing "web sites" with a view to providing another medium to disseminate information to the business community and the general public about the FTC and the FCA.

The Commission is committed to providing protection to consumers and ensuring that fair competition takes place within the Jamaican marketplace and will therefore redouble its efforts to carry out expeditious investigations into all matters which do not conform with the provisions of the Fair Competition Act.

Fair Trading Commission  
1998 May

uv:admin/reports/review98

## ANNEX I

### **SUMMARY OF CASES INVESTIGATED BY THE FAIR TRADING COMMISSION**

1997 APRIL 1 - 1998 MARCH 31

	<b>CARRIED OVER</b> From previous period	<b>RECEIVED</b> During the period	<b>COMPLETED</b> Closed during the period	<b>ACTIVE</b> At the end of period
Misleading Advertising	149	186	140	195
Not under the Act	19	184	202	1
Abused of Dominant Position	12	10	9	13
Request for Information by FTC	31	72	49	54
Request for Opinion from FTC	20	39	30	29
Investigation initiated	15	9	8	16
Offence against competition	14	31	18	27
Restrictive Practices	7	0	3	4
Sale above advertised price	2	0	0	2
Tied Selling	3	0	3	0
Authorization	7	0	0	7
Double ticketing	1	0	1	0
<b>TOTAL</b>	<b>280</b>	<b>531</b>	<b>463</b>	<b>348</b>





**FAIR TRADING COMMISSION  
AUDITED  
FINANCIAL STATEMENTS  
YEAR ENDED 31ST MARCH, 1998**

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FAIR TRADING COMMISSION

II

**ACTUAL BALANCE SHEET  
AS AT 31ST MARCH, 1998**

	Notes	1998	1997
		\$	\$
<b>Fixed Assets:</b>			
At Cost Less Aggregate Depreciation	(2b & 4)	✓ 2,215,402	✓ 2,598,279
<b>Current Assets:</b>			
Receivables		✓ 35,866	✓ 131,913
Prepayments		✓ 897,818	✓ 77,608
Fixed Deposits		0	✓ 1,012,110
Cash & Bank Balances		✓ 268,010	✓ 2,724,039
		<u>1,201,694</u>	<u>3,945,670</u>
<b>Current Liability:</b>			
Accounts Payable		✓ 60,190	✓ 42,609
		<u>60,190</u>	<u>42,609</u>
Net Current Assets		✓ 1,141,504	✓ 3,903,060
<b>NET BOOK WORTH</b>		<u>✓ 3,356,906</u>	<u>✓ 6,501,339</u>

**REPRESENTED BY:**

Capital Fund	(5)	2,215,402	2,598,279
Revenue - Accumulated Surplus		1,141,504	3,903,060
		<u>3,356,906</u>	<u>6,501,339</u>

Shirley Mayhew CHAIRMAN

Peter John Gordon COMMISSIONER

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

I have audited the Balance Sheet of Fair Trading Commission as at March 31, 1998 and the Income and Expenditure and Cash Flow Statements for the year then ended. These Financial Statements are the responsibility of the Commission's Directors and Management. The Directors and Management are also responsible for keeping proper accounting records, for safeguarding the assets of the entity and for prevention and detection of fraud and other irregularities. My responsibility is to express an opinion on these Financial Statements based on my audit.

I conducted my audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the Financial Statements are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the Financial Statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion proper accounting records have been kept and these statements, which are in agreement therewith and have been prepared in accordance with generally accepted accounting principles, present fairly, in all material respects, the financial position of the Commission as at March 31, 1998 and the results of its operations and cash flow for the year then ended and comply with the provisions of Section 13-(1) of the Fair Trading Commission Act, 1993.

  
Auditor General

34/3/99

FAIR TRADING COMMISSION

III

ACTUAL INCOME & EXPENDITURE STATEMENT  
YEAR ENDED 31ST MARCH, 1998

	Notes	1998	1997
		\$	\$
Income:	(2c)		
Government Grant		20,374,199	✓16,898,813
Other Income		✓212,605	✓561,971
Appropriations in Aid Fund	(2d)	✓55,000	✓261,037
Transfer from G.O.J. & USAID Capital Grant		✓971,029	✓926,554
		21,612,833	18,648,375
Expenses:	(2c)		
Salaries & Other Staff Costs		✓13,689,347	✓9,995,781
Travelling & Transportation		✓1,729,319	✓1,177,085
Rental		✓1,584,696	✓1,492,570
Utilities		✓214,035	✓109,968
Professional Services		✓5,130,058	✓2,042,770
Printing & Stationery		✓165,360	✓206,683
Postal & Cable		✓8,179	✓3,587
Subscriptions		✓31,931	✓49,134
Office & General Expenses		✓135,727	✓120,065
Repairs & Maintenance		✓73,803	✓49,532
Depreciation		✓971,029	✓926,554
Official Entertainment		✓56,397	✓32,772
Staff Welfare	(2e)	✓234,928	✓48,000
Bank Charges		✓52,915	✓39,173
Miscellaneous Expenses		✓185,403	✓191,285
Insurance		✓111,261	✓129,787
		✓24,374,389	✓16,614,747
Net Surplus / (Deficit) For The Year		✓(2,761,556)	✓2,033,628
Surplus At The Beginning Of The Year		✓3,903,060	✓1,869,432
<b>Accumulated Surplus At The End Of The Year</b>		<b>✓1,141,504</b>	<b>✓3,903,060</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 CASHFLOWS****YEAR ENDED MARCH 31,1998**

	1998	1997
	\$	\$
<b>Cash Flow From Operating Activities:-</b>		
Net Deficit Per Accounts	(2,761,556)	2,033,628
Adjustments to reconcile income for the year to net cash provided by activities:		
Depreciation	971,029	926,554
Transfer from G.O.J & USAID Capital Grant	(971,029)	(926,554)
Profit on disposal of Fixed Assets	(27,050)	0
	<u>(2,788,606)</u>	<u>2,033,628</u>
(Increase)/Decrease in Current Assets)		
Accounts Receivable	96,047	(114,807)
Prepayments	(820,210)	(2,201)
Increase / (Decrease) in Current Liability	17,580	(11,070)
Net Cash Provided By Activities	<u>(3,495,189)</u>	<u>1,905,550</u>
<b>Cash Flow From Investing Activities:-</b>		
Purchase Of Fixed Assets	(615,201)	(192,778)
Proceeds From Disposal Of Fixed Assets	27,050	0
	<u>(588,151)</u>	<u>(192,778)</u>
<b>Cash Flow From Financing Activities:-</b>		
Capital Fund	615,201	192,778
Net Cash Used In Financing Activities	<u>615,201</u>	<u>192,778</u>
<b>Net Increase In Cash And Cash Equivalents</b>	(3,468,139)	1,905,550
<b>Cash And Cash Equivalents at Beginning Of The Year</b>	3,736,149	1,830,599
<b>Cash And Cash Equivalents at End Of The Year</b>	<u><u>268,010</u></u>	<u><u>3,736,149</u></u>
<b>Represented by:</b>		
Cash & Bank Balances	268010	2,724,039
Fixed Deposits	0	1,012,110
	<u><u>268,010</u></u>	<u><u>3,736,149</u></u>

**NOTES TO THE FINANCIAL STATEMENTS  
YEAR ENDED 31ST MARCH, 1998**

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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 the 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.

(d) **Appropriations In Aid Fund** refer to amounts recovered for costs incurred from settling complaints outside of the Courts.

(e) \$118,997.85 of this amount relates to Staff Welfare expenses which were funded from the Appropriations in Aid Fund. \$55,000 of this amount was received in 1997/98 and the balance of \$63,997.85 was met from the Accumulated Appropriations in Aid Surplus.

**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, 1998 is \$ 4,584,860.07.