



FTCNewsLine is an on-line quarterly newsletter of the **FAIR TRADING COMMISSION** that contains information on competition matters dealt with by other competition agencies from around the world. The aim is to provide insights into some of the matters that are prosecuted in other jurisdictions; and to assist persons in better identifying issues that may pose competition concerns.

Competition legislations are specific to each jurisdiction and activities that are prohibited in one jurisdiction are not necessarily prohibited in other jurisdictions. For information on the prohibitions under the Jamaica's competition legislation, the **FAIR COMPETITION ACT**, please visit our website at www.jftc.gov.jm.

In this Issue, instead of providing information relating to other jurisdictions, we decided to feature some of the matters that we have completed or that we are currently working on.

UTECH issues Public Apology

The FTC asked the University of Technology (UTECH) to issue a public apology regarding misleading representation made while promoting the University's track meet, 'Track and Field Classic 2009.' In April 2009, UTECH advertised the participation of several renowned athletes at the meet. The FTC became concern when several of the billed athletes including 'Jamaican Olympic star, Asafa Powell,' did not participate.

The Staff investigated the matter and took the position that UTECH's conduct was likely to contravene Section 37 (*Misleading Advertising*) of the Fair Competition Act and received permission from the Commissioners to pursue the matter through the Courts. UTECH requested that the FTC exercise its discretion and settle the matter in accordance with the Fair Competition (Notices and Procedures) Regulations 2000. The matter was settled by a Consent Agreement wherein UTECH was required to pay the FTC's cost and issue a public apology in the Daily Observer newspaper for two consecutive weeks. The apology appeared in the Daily Observer of March 17 and 24, 2010.

FTC investigates 'Carib Cement Plus'

In February 2010, Tank-Weld Limited (TWL) complained that its competitor, Caribbean Cement Company Limited (CCCL) was engaging in misleading advertising. TWL is of the view that advertisements promoting 'Carib Cement Plus' suggest that the product is superior to CCCL's OPC product, 'Carib Cement.' TWL further alleged that its commissioned expert's testing showed that Carib Cement Plus was substantially weaker than Carib Cement.

The Staff of the FTC launched an investigation into the matter as we are of the view that the conduct raises competition concerns in the cement market.

FTC to investigate some private education institutions

Having received a number of complaints regarding challenges being faced by students of private educational institutions, the FTC has decided that the industry requires close scrutiny; and therefore will be carrying out an investigation into the alleged deceptive practices. Complaints received to date relate to the institutions failing to submit School Based Assessment projects on behalf of students. Other complaints relate to institutions generally not honoring commitments made to students.

The FTC has an interest in these matters, as such conduct has the potential to distort competition in the market for educational services; and also because of their negative effect on consumer welfare.

FTC concludes NSWMA investigation

The FTC concludes its investigation into the operation of the National Solid Waste Management Authority (NSWMA) and its four regional bodies, regarding the haulage of non-residential solid waste. The final report was sent to the Department of Local Government, which has oversight responsibility for the NSWMA, as well as to NSWMA and the Ministry of Industry, Investment & Commerce.

The investigation was triggered from complaints from private enterprise which haul non-residential solid waste. Specifically, the Informants claim that private non-residential solid waste enterprises are placed at a competitive disadvantage as public entities are generally afforded certain privileges that are unavailable to the private entities with which the public entities compete.

Given that NSWMA is a statutory monopoly with respect to the haulage of residential solid waste; and is the sole operator of the approved dump sites in Jamaica, the investigation was carried out in reference to Sections 19-21 of the Fair Competition Act which address the conduct of dominant enterprises.

NSWMA has indicated that the resources provided by the government are insufficient to adequately and effectively deal with the collection and disposal of residential solid waste; and therefore the income generated from the non-residential garbage collection operation is used to supplement its residential operation. There is, however, no evidence that its operation in the market for non-residential solid waste haulage is profitable, so as to improve its provision of service in relation to the haulage of residential solid waste.

While it was found that NSWMA is unlikely to be dominant in the market relating to non-residential waste haulage, there is concern that as it expands its operation in that market there is likely to be further distortion of competition. Further, the expansion of NSWMA in that market is likely to negatively affect the quality of service (frequency of collection) with respect to the collection and transportation of residential waste, if there is continued opportunity for resources to be diverted from the residential operation to the non-residential operation.

To restore the competitive environment, the FTC has recommended that, if the state is going to be involved in the commercial operation of collecting non-residential waste, in competition with the private sector, then necessary infrastructure must be established, so as to separate the residential waste operations from the non-residential waste operations. It is further recommended that the commercial unit must operate independently of the Government.

FTC encourages competition in the horseracing industry

With respect to the proposed amendments to the Betting Gaming & Lotteries Act (BGLA), the FTC became particularly concerned with certain provisions which would prevent non-promoters of horse racing from offering pool betting services in Jamaica. If passed, it would likely result in the pool betting services being monopolized by Caymanas Track Limited (CTL).

Based on FTC's research, into the competition implications, we concluded that an enhanced competitive environment for pool-betting services, such as that which would result from the introduction of commingling agreements, does not necessarily represent a threat to the local horse-racing industry. To the contrary, competition provides current and prospective suppliers with the proper incentives to continually develop the industry, and thereby maximize the surplus accruing to the Government, punters and other industry participants.

We advised the Special Select Committee of Parliament that the BGLA should be crafted to encourage and safeguard competition. Specifically, we recommended that non-promoters of horse-racing be permitted to offer pool-betting services on horse-racing. It is important to note that our recommendation is based on our observation that the non-promoters could only enhance the competitive environment in which pool-betting services are offered and horse-racing is promoted.

This latest effort on our part to safeguard competition in the local horse racing industry follows an earlier intervention in February 2003, in which we submitted our opinion on the provision in the Second Schedule of the BGLA, which required that licensed betting shops be closed one-half hour before the scheduled time for the first locally run race. Our recommendation was that the provision should be removed from the Statute because said provision is restrictive and is likely to affect competition in the relevant market. It is our understanding that the removal of this provision is now being contemplated.