COMPETITION MATTERS

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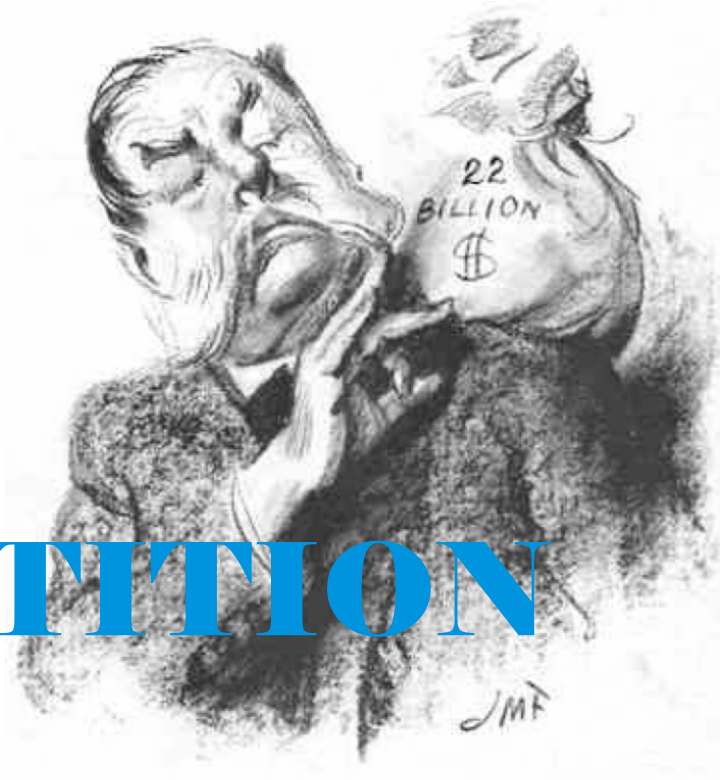
REGULATION AND COMPETITION



FTC's Mission Statement

To provide for the maintenance and encouragement of competition in the conduct of trade, business and in the supply of services in Jamaica, with a view to providing consumers with competitive prices and product choices.

Foreword

"Competition Matters" continues to provide you, our valuable readers, with insight into the work of the Commission as well as informed perspectives on a variety of matters related to competition.

Accordingly we welcome alliances with the Jamaica Veterinary Medical Association, UWI Barbados, and international bodies such as the International Development Research Centre. We thank all those individuals and organizations who have contributed directly or indirectly to this year's Newsletter; which pays particular attention to the relationship between competition and regulation in both the local and international settings.

We invite you to enjoy the smorgasbord of information that is **Competition Matters** and to visit our website for more.

Happy reading!

Oretia Peart
2006 Newsletter Co-ordinator

In this Issue

Competition Matters is an annual publication of the Fair Trading Commission.
For questions, concerns, comments or additional information please contact:

FAIR TRADING COMMISSION	52-60 Grenada Crescent, Kingston 5, Jamaica Telephone: (876) 960-0120-4; Telefax: (876) 960-0763 Website: www.jftc.com; Email: ftc@cwjamaica.com

Co-operative effort between the FTC and the UWI, Cave Hill, Barbados

At the request of the Faculty of Law at the Cavehill Campus of the University of the West Indies, Dr. Kevin Harriott, senior economist and Head of the Competition Bureau, delivered a guest lecture in April 2006 to final year students enrolled in the Faculty's competition law course. The topic of the lecture was 'Providing economic evidence for anti-competitive activities'. Lecture notes can be viewed on or downloaded from the Commission's website at http://jftc.com/news&publications/Speeches/speeches.htm.

The Commission agreed to work with the Faulty of Law in overhauling the curriculum for the law course in order to increase the students' exposure to economic principles which underpin competition law.

Trinidad & Tobago's Fair Trading Act

The Jamaica FTC takes this opportunity to acknowledge the passing of Trinidad &Tobago's FTA and looks forward to the timely establishment of that country's competition authority. This development has taken place none too soon, given the imminence of the CARICOM Single Market and Economy.

FTC's Report on the Jamaica Veterinary Medical Association Constitution & By-Laws

In 2004, the Staff of the Fair Trading Commission (FTC) received an invitation from the Jamaica Veterinary Medical Association (JVMA) to make a presentation on the provisions of the Fair Competition Act (FCA) to its members at its regular meeting. Following the presentation, the JVMA wrote to the FTC requesting that the Staff review its Constitution and By-Laws as it was of the view that some of the provisions might be in conflict with the FCA. The Staff reviewed the document and recognized that parts of it, particularly those provisions relating to advertising, were in fact restrictive to competition.

Consequently, the FTC worked along with the members of the Association to make the necessary revisions to the document. In June 2006, the new Constitution and By-Laws were completed and are now consistent with the principles of competition and fully compliant with the FCA. The Staff commends the Association for showing an understanding of the role of the FCA, and its own responsibility in advancing the competitive process in the veterinary services sector; and exponentially in Jamaica. In September 2006 the FTC invited the JVMA to contribute to its Annual Shirley Playfair Lecture by relating the experience with the FTC, which led to the revision of its Constitution and By-Laws.

EPAs - A Global Trend

Thanks to the World Trade Net Team, which produces the very informative World Trade Net newsletter, we are kept abreast of all significant trade-related developments around the world. We are happy to share some of this information with you.

In the wake of the failure of the Doha Round of Negotiations to achieve consensus on critical tariff and subsidy issues within the multilateral framework of the WTO, Free Trade Agreements (FTA), and Economic Partnership Agreement (EPA) have mushroomed, within the context of bilateral arrangements and Regional Trade Agreements (RTA).

Volume 7, N° 9(2) of the September 2006 issue of World Trade Net highlights the following:

1. Members of the Common Market for East and Central Africa (COMESA) have begun fresh talks with the EU on a proposed EPA. According to COMESA Secretary General Erastus Mwencha, the EPA's principal aim would be to enable member countries to address issues of competitiveness and enhanced access to external markets. Speaking early September at the opening of a high level COMESA customs union talks in Nairobi, Mwencha said the EPA, once ratified, will provide a safeguard to COMESA products that currently enjoy preference in the EU. Mwencha added that members were in the process of deliberating on the recommended tariff bands for the common external tariff.
2. The *Inforpress* news agency reported early September that the government of Cape Verde had abandoned an agreement established as part of the Economic Community of West African States (ECOWAS)[2] and plans to negotiate an EPA directly with the EU. The country's director general of trade justified the decision by the fact that Cape Verde "has specifics that are not common to the ECOWAS countries," namely its insular nature and economic peculiarities that are the result of its being a nation of islands.
3. Barbados daily *The Nation* reported that two organizations, the Barbados Private Sector Trade Team (BPSTT) and the Regional Negotiating Machinery (RNM), summoned representatives from all local businesses to a national consultation at the end of September on the new EPA currently under negotiation between CARIFORUM (CARICOM and the Dominican Republic) and the EU. *The Nation* report said they were urged to come prepared not just to speak about the negative fallout expected, but to outline their vision for the long-term future of their businesses. EPA negotiations, scheduled to be concluded in December 2007, are now in the third of four phases.

[1] COMESA is: Burundi, Comoros, Congo D.R., Egypt, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Seychelles, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe.

[2] ECOWAS: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. (Mauritania withdrew in 2002).

FTC 2006 Judges Workshop

On September 8th and 9th, 2006, the Fair Trading Commission (FTC) hosted its third Workshop for members of the Judiciary. On this occasion Mr. William Kovacic, Commissioner of the United States Federal Trade Commission, conducted the Workshop. Commissioner Kovacic has advised, among others, the governments of Armenia, Benin, Egypt, El Salvador, Russia and Zimbabwe, on antitrust and consumer protection issues. He has authored several publications on the subject area.

Left to right: Mr. W. Kovacic; Mrs. Justice A. Haynes; Ms. L. Palmer, Deputy DPP; Mr. Justice R. Worrell; Mr. K. Pantry, DPP; and Mr. Justice R. Williams.

The Workshop focused on Market Definition & Market Power, Abuse of Dominance, Horizontal & Vertical Restraints, Mergers & Acquisitions, and Expert Testimony and the Evaluation of Economic Evidence. This undertaking was funded by an Inter-American Development Bank (IDB) facility aimed at building the technical capacity of the FTC as well as increasing the awareness and knowledge of key participants in the process of Competition enforcement.

Thirteen (13) persons attended - nine (9) Jamaican Judges; the Director and a Deputy Director of Public Prosecutions; and two (2) Barbadian Judges. Five (5) of the nine members of the local judiciary had also participated in the September 2004 Workshop, which paid special attention to the judge's role in the Competition enforcement process.

It was in recognition of the vital role of the judiciary in this process that the Commission committed itself in 2002, to implementing a training program for the Judiciary, by facilitating a Seminar or Workshop as resources permitted. The first seminar got underway in January 2003; and it highlighted Competition Issues in the Telecommunications sector. The presentation proved stimulating for the twenty Judges who attended. Since then the FTC has been able to secure financial assistance from the United States Agency for International Development (USAID) and the IDB for the purpose of enabling it to continue with the programme, which we hope will serve to address the needs of the region, in some measure.

FTC Hosts Event Promoters Seminar

Over the past five years, the Fair Trading Commission (FTC) received a number of complaints which charged that advertisements related to various staged events were misleading in nature. The complaints included among others: failure of scheduled artistes to perform, failure of events to start at the scheduled times, ticket price being higher than that advertised and failure to notify of changes in venue or any other material change related to the relevant events. It was becoming increasingly obvious that a trend toward anti-competitive conduct had developed among persons or enterprises in the sector.

Left to right: Ms. E. Channer, Economist/Competition Analyst; and Ms. S. Shillingford, Senior Legal Counsel.

Misleading advertising is an offence under section 37 of the Fair competition Act (FCA); and although the FTC has the option of prosecuting offenders, the Staff felt that a public education effort focusing on the specific sector could be an effective tool in attempting to combat the problem. With this in mind, the FTC held a seminar on Monday, October 23, 2006 at the Knutsford Court Hotel, for the relevant players in the industry, being event promoters, major event sponsors and other persons and organizations with related interests. The seminar outlined the obligations under the FCA of persons involved in staging events, with presentations being made by Ms Sasha Shillingford, Senior Legal Counsel and Ms. Evona Channer, Competition Analyst, on misleading advertising and exclusive sponsorship arrangements respectively.

Above: Other members of the audience listen keenly as a representative of J. Wray & Nephew makes his point.

The information was well received and spurred vibrant discussion. Some of the organizations/companies represented were the Ministry of Tourism, Entertainment & Culture, Jamaica Cultural Development Commission, 360° Productions, Platform Media, Supreme Promotions, DNA Entertainment, Jamaica Association of Composers, Authors & Publishers. Air Jamaica, Red Stripe, Digicel Jamaica Ltd., and J. Wray & Nephew.

To the left: Ms. S. Shillingford *(far left)* in discussion with members of the audience during a coffee break.

The Staff of the FTC will be vigorously enforcing the Fair Competition Act as it pertains to all aspects of promoted entertainment events, a sector which is becoming increasingly important to the Jamaican economy.

FTC's Presentation to Tertiary Educational Institutions

Above: Ms. S. Shillingford, Senior Legal Counsel (standing) and Dr. K. Harriott, Bureau Chief (seated).

On October 5, 2006, the Staff made a presentation to a combined audience of students from various tertiary educational institutions on Competition Policy and the Fair Competition Act. Students from ten (10) schools were invited to attend, including, among others, the University of the West Indies, the Christian School for the Deaf, Dells Beauty School, and the Academy of Higher Learning. The session was held at Nettleford Hall at the University of the West Indies, Mona Campus.

Executive Director of the FTC, Mrs. Barbara Lee, began with an overview of competition policy and some of the concepts of competition law. Dr. Kevin Harriott, Competition Bureau Chief, presented on the offence of Abuse of a Dominant Position, and was followed by Sasha Shillingford, Senior Legal Counsel, who led the audience through the various forms of anti-competitive agreements. Dr. Harriott ended with a discussion on Misleading Advertising and its effect on

The presentation was well received by all.

Above: Members of the audience listen attentively as Ms. S. Shillingford delivers her presentation.

Seventh Annual Shirley Playfair Lecture

The seventh annual lecture in the Shirley Playfair Lecture Series was held on Wednesday, September 6, 2006 at the Knutsford Court Hotel.

Above: (left to right) Mr. W. Kovacic, US F.T.C; Dr. P. Gordon, Jamaica F.T.C; Mrs. D. Kitson, Jamaican Bar Association; Dr. G Brown, J.V.M.A (partially hidden); and Mr. B. Wynter, F.S.C.

Presenter was Mr. William Kovacic, Commissioner of the United States Federal Trade Commission, and advisor on antitrust and competition issues to several countries. His presentation focused on "Competition Policy and the Professions" and asked the question: "Should Regulators fear Competition?". Mr. Kovacic reviewed the non-litigation tools used to develop Competition Policy; provided an illustration of how a multi-dimensional strategy can promote the attainment of superior Competition Policy results; and examined the types of capital investments in institutional capability that a Competition Agency must make in order to carry out its litigation and non-litigation programmes effectively.

In his animated and informative presentation he described how tools such as advocacy, education, research and industry studies of impediments to competition may be used by Agencies in applying Competition Law to regulated sectors and the professional bodies which they might regulate.

He highlighted some of the arguments which such bodies advance in support of their requests for exceptional treatment under Competition Law and emphasized the importance of an Agency's credibility, as it attempts to strike the proper balance between issues such as professional standards on the one hand and conduct inimical to competition, on the other.

The Jamaica Veterinary Medical Association, the Jamaican Bar Association and the Financial Services Commission were invited to make comments on the subject. These bodies were represented by Dr. Graham Brown, President, Mrs. Denise Kitson, Secretary, and Mr. Brian Wynter, Executive Director, respectively.

Above: Dr G. Brown, JVMA addresses the audience. Looking on are *(left to right)* Dr. .P. Gordon, Jamaica F.T.C; Mr. W. Kovacic, US F.T.C; Mrs. D. Kitson, Jamaican Bar Association; and Mr. B. Wynter, F.S.C *(partially hidden)*.

Dr. Graham Brown's presentation briefly described how considerations of Competition Law and Policy have been able to transform his Association into one that encourages rather than restricts competition among its members. In his commentary Mr. Brian Wynter expressed the view that although competition is important to the proper functioning of markets, financial regulatory provisions should have primacy over Competition Law in dealing with the financial sector.

The audience comprised representatives of various interest groups and stakeholders such as the business community, the Jamaican Bar, the Judiciary, Government Ministries and Agencies, and academia.

Following the presentations, a spirited discussion ensued in which several persons had their issues addressed by the presenters. This interactive session was moderated by the Chairman of the FTC and lasted for a half hour.

INDUSTRY STUDY

The IDRC Study of the Pharmaceutical Sector

The study commenced in May 2006 and is financed with a grant from the Ottawa-based International Development Research Centre (IDRC). It has three main components: (i) assessing the attitudes of various interest groups toward innovator and generic prescription drugs; (ii) comparing the physical qualities of the innovator and generic drugs; and (iii) quantifying the economic value of the benefits derived from the use of prescription drugs applied in the treatment of hypertension in Jamaica. The Consumer Affairs Commission (CAC) and the University of Technology (UTech) are collaborating with the Fair Trading Commission given their particular competencies.

In total, over one thousand consumers across the island were interviewed as part of the study; over two hundred physicians of varied specialties; in excess of thirty pharmacists; and fourteen distributors/ wholesalers of prescription drugs were also interviewed. In addition, the study also assessed the relative effectiveness of innovator and generic tablets in five classes of antihypertensive drugs.

The final report arising out of the study will be made available to the public within a few months. Among other things, the report will highlight factors limiting the extent of competition in the pharmaceutical industry and include recommendations to address concerns highlighted.

A Practical View of Intellectual Property Piracy

The term "intellectual property piracy" may be defined as the *unauthorized use, distribution and/or sale, for commercial gain, of material or works in which the Intellectual Property rights belong to another*. The phrase "intellectual property rights" generally refers to the proprietary rights which benefit the creator or authorized owner of a trademark, copyright, patent and/or an industrial design.

For many consumers and providers of consumer goods and services, trade marks - that is, the marks which distinguish one undertaking from another undertaking - are important in that they convey information about the quality of goods and services, and many consumers purchase goods solely on the basis of the presence of a trade mark in connection with a particular good or service. In fact, many consumers purchase goods - particularly luxury goods - based more on the mark associated with the goods and what that mark represents in terms of prestige, than for the goods themselves. In comparison, the appeal for consumers of material which is most often the subject of copyright protection, such as movies and music, is based less on prestige or reliability, and more on the often instantaneous emotive effects of such material on the individual.

In the Caribbean context, and certainly in the Jamaican context, we most often see widespread intellectual property piracy occur in the form of copyright infringement, including but not limited to the unauthorized copying and distribution of music and movies for profit.

Under the Jamaican **Copyright Act** (the "Act") the owner of copyright in a work shall have the exclusive right to:

(a)copy the work;
(b)issue copies of the work to the public;
(c) perform, play or show the work in public;
(d)broadcast the work;
(e) make an adaptation of the work.

The Act provides that copyright in a work is infringed by any person who, without the license of the copyright owner, does any of the acts listed above.

The act of intellectual property piracy, therefore, inevitably involves an infringement of the intellectual property rights of the owner thereof and a breach of the Act.

The appeal for pirates, however, in continuing to infringe such rights is the great potential for economic gain to be derived from the unauthorized sale of such copyright material. This is made easier for pirates for two main reasons:

1. It is often cheaper and easier to copy, package and sell copyright material such as music CDs and movie DVDs, particularly with advancements in reproduction technology, and for example, place another person's trade mark on it fraudulently, than it is to produce many other types of goods; and
2. Consumers in general appear to be much more wary of buying counterfeit goods such as bottled drinks, foodstuff or even automobiles, because of the potential hazards to health and safety, than they are of purchasing a CD or

DVD created without the authorization of the copyright owner.

In fact, one of the difficulties faced, particularly in the Caribbean context, in educating the public about the importance of respect for intellectual property rights, is that many copyright owners are generally not as concerned as trademark owners, for example, that the goodwill or popularity in their product will be diminished as a result of the unauthorized use of a product in which they hold the copyright. Many entertainers have openly stated that the illegal distribution of their music has actually enhanced their popularity. Nonetheless, as the popularity of many such entertainers increases along with the technological advances that allow for easier unauthorized copying of their material, the main complaint of copyright owners and the authorized beneficiaries of works in which copyright exists, is the economic losses they sustain as a result of the illegal sale by pirates of the results of their hard work.

As a copyright owner or authorized beneficiary of the rights of the copyright owner, however, there are methods you may consider implementing to deter infringement of your intellectual property rights. These include:

1. *Mail-Back System:* sending a copy of your creation to yourself by dated registered mail, and leaving the package unopened and carefully stored. This package may be useful later on in a possible Court proceeding as persuasive evidence of the duration of your right to a piece of work and your efforts to protect it.
2. *Advertising your Rights:* advertising your intellectual property rights to your creations via the media (newspapers, for example) and your intention to take action against potential or actual infringers of your rights. You may also wish to inform the public of where they can apply for authorization to use your copyright material.
3. *Keeping Records:* delivering to a reputable organization or individual (such as a Justice of the Peace or your Attorney-at-Law) for safe-keeping, a record of the particulars of your copyright material, or a copy thereof, including the dates of creation.
4. *Written License Agreements:* ensuring that if you use distributors or exporters or even third party manufacturers for the products in respect of which you are the intellectual property rights holder, you have proper written license agreements in place with such persons, which detail the terms under which you grant them the use of your intellectual property and the conditions under which such license may be revoked.
5. *Copyright Notices on Products:* displaying a copyright notice (including the date of creation and the copyright "©" symbol) on the labels of the products in respect of which you have intellectual property rights.

Despite the measures you put in place to try to prevent or deter infringement of your intellectual property rights, however, you may still fall victim to piracy.

In Jamaica, statutory legislation (including the Act) provides viable criminal and civil remedies to combat and deter intellectual property piracy.

Under the Act, an infringement of copyright shall be actionable at the suit of the copyright owner and, in any civil action for such an infringement, all such relief by way of damages, injunction or otherwise, shall be available to the successful plaintiff.

Section 46 of the Copyright Act, which outlines the criminal offences under the Act, states that any person who at a time when copyright in a work subsists by virtue of the Act

(a) makes for sale or hire; or

(b) in the course of a business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes; or

(c) imports into Jamaica for purposes other than his private and domestic use; or

(d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

any article which he knows or has reason to believe is an infringing copy of that work, commits an offence.

The penalties for such offences include a prison sentence of up to five years and fines of up to One Hundred Thousand Dollars (J$100,000.00) per offence.

In Jamaica, and throughout the Caribbean, there is no doubt that the problem of intellectual property piracy has rapidly increased over time. Contributing to this rapid increase are factors which include the advances in easily available reproduction technology, the emphasis of certain law enforcement officials and members of the judiciary and the government on other forms of crimes or breaches of the law (such as the illegal drug trade), and even the apparently dispassionate or moderate attitude of many members of the public and certain copyright owners themselves towards the problem of intellectual property piracy.

Those persons who do work assiduously to eliminate this problem, however, often put forward very valid reasons as to why respect for, and the protection of, intellectual property rights should be encouraged. Through recent admirable efforts of members of law enforcement, we have witnessed an example in Jamaica which links the illegal music and movie trade to the funding of organized crime and the illegal firearm trade a connection long understood by those who study and follow intellectual property developments. Many intellectual property experts also emphasize the harm and disenchantment that piracy causes to the actively creative people within a country and its ultimate effect on the creative national identity of a country. The reality is that if we do not encourage respect for the intellectual property rights of others, we can hardly argue for the respect by others for our own rights.

From a practical perspective, however, it should be clearly understood and enunciated that the infringement of intellectual property rights of others, in Jamaica and around the world, is illegal and can attract severe sanctions under our laws. As the problem of piracy continues to increase locally, we expect to see such sanctions more rigorously enforced and more severely applied.

Ronald J. Young is the Deputy Chairman of
The Jamaica Anti-Piracy Alliance
Email: antipiracy@cwjamaica.com

"Striking the Right Balance: Promoting Innovation in a Competitive Environment" *

Introduction

It is a truism to say that innovation in the science and technology sector is a key driving force of economic growth and therefore an important factor in generating sustainable economic development. The varying degrees of success, in terms of rates of economic growth, experienced by nations pursuing competition policies suggest that not all competition policies are designed and/or implemented with equal effectiveness. One important factor that may be contributing to the differential economic growth rates across the various nations engaged in implementing competition policies is the level of harmonization across the various statutes and regulations used to support competition policy. That is, the extent to which competition policy makes provisions for resolving conflicts related to its various components will influence the success with which it can be implemented

Competition law

A nation's competition law may be defined as "legislation, judicial decisions, and regulations specifically aimed at avoiding the concentration and abuse of market power on the part of private firms, which could use that power to exclude potential competitors."[1] The three main pillars of competition law are prohibitions against (i) conspiracy, (ii) abuse of a dominant position and (iii) mergers.

(i) Conspiracy:- refers to agreements among rival firms to limit the intensity of competition amongst themselves;
(ii) Abuse of a dominant position:- refers to various unilateral actions taken by a firm which enjoys a position of superior economic power in a market, and which have the effect of increasing its extent of market power and lessening competition substantially; and
(iii) Mergers:- refers to arrangements in which at least two hitherto separate legal enterprises become a single entity.

Jamaica's competition law, the Fair Competition Act (FCA), was adopted in 1993 and fits into this general definition with the major difference being that mergers cannot be scrutinised under the FCA.

Intellectual Property Rights[2]

Intellectual property (IP) includes copyrights, patents, registered designs and trademarks. A registered owner of an IP is granted exclusive rights to use it for commercial gain. In Jamaica the rights associated with the various types of IP are set out under various statutes that are administered by the Jamaica Intellectual Property Office (JIPO). As owner of such

[1]Lahouel, M. and K. Maskus (1999), "Competition Policy and Intellectual Property Rights in Developing Countries: Interests in Unilateral Initiatives and a WTO Agreement", presented at *The WTO/World Bank Conference on Developing Countries*[1] *in a Millennium* Round, Geneva.

[2] This section draws heavily from Whish, Richard (2001), Competition Law (4th Edition), The Bath Press, Great Britain.

rights, such a person may enter into licensing agreements which allow other persons to utilise the IP for commercial purposes subject to the terms of the relevant agreement. IP licensing agreements usually address at least one of the following matters:

(i) Territorial exclusively; (ii) royalties; (iii) duration; (iv) field of restriction; (v) best endeavours and non-competition (vi) no challenge consideration (vii) improvements; standards; and (ix) price, terms and conditions

(i) Territorial exclusivity:- gives the licensee the exclusive licence to operate within a predefined region;

(ii) Royalties:- speak to specified amounts to be paid by the licensee to the IP owner for the right to use the IP.

(iii) Duration:- the specified length of time for which the licensee is authorised to use IP.

(iv) Field of use restriction:- The relevant clause limits the way in which the licensee can use the IP property.

(v) Best endeavours and non-competition:- Best endeavour clauses encourage a more intensive use of the IP e.g. by requiring minimum quantities of production. Non-competition clauses prohibit the licensee from competing with the patented technology.

(vi) No-challenge:- This prevents the licensee from challenging the legitimacy of the IP.

(vii) Improvements:- The relevant clause would require the licensee to grant back a licence for any IP acquired through the use of the licensed IP.

(viii) Standards:- Through these clauses, IP owners impose standards for the final product relating to quality, promoting, etc.

(ix) Prices, terms and conditions:- The IP owner would set the price and conditions under which the licensee should sell the goods.

Promoting Science & Technology (S&T) under the FCA

On the face of it, IP rights operate in clear conflict with the spirit of competition law, that generally proscribes unnecessary restrictions on commercial activities, but the evidence suggests that Jamaica's competition law subscribes to the school of thought that a greater level of innovation is stimulated in more concentrated market structures, which are largely devoid of competitive forces. Thus Section 17 of the FCA prohibits "agreements which contain provisions that have as their purpose the substantial lessening of competition, or have or are likely to have the effect of substantially lessening competition in a market," but by sub-section (4) allows firms to give effect to such an agreement if the Commission is satisfied that *inter alia*, it:

"(a) contributes to-

(i) the improvement of production or distribution of goods and services or

(ii) the promotion of technical or economic progress

while allowing consumers a fair share of the resulting benefit."

Similarly, Section 20 (2) (b) provides a complete defence to a dominant enterprise where it is shown that its anti-competitive conduct occurred exclusively for the reason that it "enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered design or trade mark."

The real issue is, what is the right balance between competition and the recognition of IP rights. The Barbados Fair Competition Act provides an excellent example of how that balance may be struck. Section 16(4) states that "An enterprise should not be treated as abusing a dominant position…(c) by reason only that the enterprise enforces or seeks to enforce any right under or existing by virtue of any copyright, patent, registered, design or trademark *except where the Commission is satisfied that the exercise of those rights (i) has the effect of lessening competition substantially in a market; and (ii) impedes the transfer and dissemination of technology.*[emphasis added]" and it is these words "…except where the Commission is satisfied that the exercise of those rights (i) has the effect of lessening competition substantially in a market; and (ii) impedes the transfer and dissemination of technology..." that make the difference.

Indeed Article 40 (2) of the World Trade Organization (WTO) agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), to which Jamaica is a signatory, states that nothing in that Agreement shall prevent members from specifying in their legislation such licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market."[3] It allows a Member to adopt, consistently with other provisions of the TRIPS, appropriate measure to prevent or control such anticompetitive practices. The onus is therefore on sovereign nations to determine how to harmonize IP rights law and competition law.

Conclusion

The stimulation of innovation in Science and Technology is unquestionably a necessary component of any competition policy geared toward generating a level of goods and services that would be sufficient to sustain economic growth. Competition law is no less important, as a competitive environment ensures that society extracts the maximum benefits from the use of its productive resources and technologies. Brian McHenry, Solicitor to the Office of Fair Trading, the UK's competition authority, puts it thus: "Competitive markets benefit consumers and make the economy work better. They help promote innovation and root out inefficiencies."[4] As we move closer to regional economic integration, we must ensure that competition policy provides a readily available mechanism for addressing conflicts that arise in implementing the various pieces of legislation within the framework of Competition policy.

[3] A copy of the Agreement can be viewed at http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm/ Last accessed September 26, 2006.

[4] McHenry, Brian, "Legal Focus," *Fair Trading*, Issue 38, July 2004, p. 9.

* This paper is an abridged version of a presentation made by the FTC at the 20th Annual Conference on Science and Technology held in Kingston, Jamaica November 20-22, 2006. The views expressed are solely attributed to the Staff of the Commission and are independent of the views of the Commissioners.

The Evolution Of Antitrust Law And The Impact Of Political Will

In his quest to increase his personal wealth and business dominance through a series of conspiracies, price fixing and other anticompetitive activities, Nineteenth Century American "robber baron" and railroad tycoon William Vanderbilt once famously proclaimed **"the public be damned!"** Thankfully, the modern businessperson and final consumer are usually better protected than their predecessors were from the excesses of powerful business interests. This was not always the case, however, and it is due to such Vanderbilt-type sentiments, their disastrous effects, and recognition that markets function effectively only if businesses compete fairly, transparently and ethically, that competition law developed. In order to fully appreciate the role and function of competition law and to embrace its goals, it is vital that we have an understanding of its evolution - with specific focus on its evolution in the United States of America.

The focus on the United States (US) experience, as opposed to that of the European Union or Canada from whose laws a number of our provisions were taken, is deliberate. From an information standpoint, the US provides examples of some of the strongest competition laws and arguably the largest body of related case law. This has occurred mainly as a result of the litigious culture of the society that has resulted in businesses and individuals being more likely to revert to the Courts for the settlement of their disputes. Another benefit to focusing on the US is that it provides clear examples of the impact of politics and the economy on competition law. An examination of the US experience, therefore, can assist countries that are in the process of developing or refining their competition laws.

The Birth Of Trust

The bitterly fought American Civil War resulted in tremendous damage to the landscape in a physical, social, economic and political sense and led to a great need for reconstruction. This reconstruction period led to rapid industrialization, which, for many industries, resulted in output exceeding demand. It is in this climate that trusts emerged. These 'trusts' were created to merge and consolidate all the companies in particular industries in order to combat the decreasing profits that many were experiencing. This meant that entire industries were brought under the control of a few powerful people. The trusts would often fix prices at any desired level in order to minimize competition and to increase profit, and would prevent new entrants into the market by selling their goods at a loss until the new entrant, being unable to compete, went out of business.

These 'trusts' were created to merge and consolidate all the companies in particular industries in order to combat the decreasing profits that many were experiencing.

The Sherman Act And The Rule Of Reason

These practices had a negative impact on consumers and potential entrants and led to vociferous demands for reform. It was widely felt that free competition was essential and that Americans should have

the opportunity to create businesses without being either forced out of the market, or compelled to sell to large powerful companies. Support for this view was forthcoming from a number of politicians including a Senator John Sherman who gave voice to the concerns of the people when he stated **"If we will not endure a King as a political power we should not endure a king over the production, transportation and sale of any of the necessaries of life."** In response to the demands for reform, Congress passed the ***Sherman Anti-Trust Act***, in 1890, which outlawed trusts. It was intended that the Act would limit the expansion of monopolies, prevent the restriction of free trade and limit the incidence of price fixing by industry members.

The *Sherman Anti-Trust Act* was put to the test twenty years later in 1911 in the landmark ruling in *Standard Oil Company of New Jersey* v. *United States*[1]. The Standard Oil Trust was owned by John D Rockefeller whose net worth in 1910 was equal to nearly 2.5% of the US economy (US$250 billion in today's terms). Farmers, in particular, complained about this trust as they had to pay excessively high prices for oil dependent rail transport to take their produce to the cities. In the 1911 decision, the Court broke up the trust into thirty-three companies that competed with one another. Significantly, it also added the "rule of reason" approach, which introduced the idea that not all big companies, and not all monopolies are evil, and it is the courts that will decide. To be deemed harmful, therefore, a trust had to damage the economic environment of its competitors in some way.

Critics attacked the approach out of concern that conservative judges would gut the Act; that there would be a return to lax enforcement; and that in the absence of specific unlawful restraints, the *rule of reason* gave courts unbridled freedom to interpret the law subjectively. Despite the good intentions therefore, the Act was viewed as a weak piece of legislation since critical terms such as 'restraint of trade', 'combination' and 'monopolise' were not precisely defined. The Act also failed to establish an independent commission to investigate possible anti-trust cases.

The 2ND Generation Of US Competition Legislation

In response to the acknowledged inadequacies of the Sherman Anti-Trust Act, Congress passed the ***Clayton Act*** in 1914, which was considered to be a vastly improved piece of legislation compared to its predecessor. It prohibited specific business conduct, such as, price discrimination; tie-in sales; exclusive dealership agreements; and mergers, acquisitions and interlocking corporate directorships where they "substantially lessened competition" or "tend[ed] to create a monopoly". The Act exempted unions from antitrust law as Congress decided that human labour would not be treated as a commodity. At that time, Congress also established the ***Federal Trade Commission Act***. The Act did not attach criminal penalties, but provided that unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce are illegal. The law also created a regulatory agency, the Federal Trade Commission, to interpret and enforce the Act. With these Acts in force, the USA was able to enforce its competition laws earnestly and develop much needed jurisprudence in the field.

Antitrust enforcement continued to evolve in conjunction with the country's development and changes in administration. World War I and the state of the economy in the 1920s resulted in yet another change in attitude toward antitrust enforcement. The Government encouraged business cooperation and the creation of self policing trade associations. Competition was reduced and it has been forcefully argued that these policies, in part, led to the Great Depression. Talk of 'trust busting' in this era was virtually non-existent.

Large companies like Ford, General Motors and General Electric were viewed as having helped win the war as a result of the significant impact they had on wartime production.

The Effects Of Ideological And Economic Changes On The Enforcement Of Competition Laws

By the mid 1930s, economic decline led to a resurgence of investigations into monopolies and as such, antitrust enforcement regained some importance. The ***Robinson-Patman Act*** which was passed in 1936 overtly prohibited forms of price discrimination. In 1940 alone, the government brought more than eighty antitrust suits. The case, *United States* v. *United States Steel Corporation*[2], marked another important development in competition law. In that case, the Court implemented a two-part test for determining illegal monopolization:

Economic analysis would be the main tool in the formulation and application of competition rules although *per se* rules remained important.

(1) the firm must possess monopoly power in a relevant market, and (2) it must have improperly used exclusionary conduct to gain or protect that power.

During World War II and into The 1950s there was another shift in ideology, which resulted in a return to an acceptance and encouragement of big business. "The bigger the better" was the mantra in the corporate world and in the halls of the administration. Large companies like Ford, General Motors and General Electric were viewed as having helped win the war as a result of the significant impact they had on wartime production.

The early and mid-1960s saw another trend emerging. Two schools of thought held sway at that time. One school regarded markets as fragile and in need of public intervention. Economic efficiency took a backseat to the belief in the ability of the antitrust doctrine to meet social and political goals. The second school saw business rivalry as healthy, distrusted public intervention in markets, and insisted that they would self-correct to erode private restraints and power. The Court at that time saw the need for decentralized social, political and economic power, ahead of the ideal of economic efficiency. A number of rulings exemplified this position, an example being one in which a merger between two firms, which accounted for only five percent of total industry output, was held to have violated the principal anti-merger provision of the antitrust laws.[3] In an important case concerning non-price vertical restraints[4], the Court ruled that

such restraints were *per se* illegal, that is, so harmful to competition that they need not be evaluated for any procompetitive effects. Critics rejected the use of *per se* tests to invalidate agreements between competitors or buyers and sellers, as some non-price vertical restraints do and did lead to gains in economic efficiency. Despite this opposition, the Court continued in its approach.

Modern Shifts In Competition Enforcement

By the late 1960s and into the 1970s, the political tides began to change once again. The Court was retreating from its position of robust interventionism; starting to abandon its hostility towards efficiency; and returning to the *rule of reason* test to evaluate non-price vertical restraints. Economic analysis would be the main tool in the formulation and application of competition rules although *per se* rules remained important. In one ruling, the Court stated that antitrust laws *"…were enacted for the protection of competition, not competitors."*[5] This has become the watch-word for competition enforcement around the world. The previous view that the demise of small firms was bad for competition was replaced by the view that large firms can have positive effects on the market, such as reduced cost of production and increased output.

In 1982 there were further far-reaching developments. The *Sherman Act* was used to break up AT&T, one of America's largest companies. AT&T had been the monopoly telephone supplier for virtually every household in America. It was argued that AT&T had impeded competition on long-distance telephone service and telecommunications equipment. The federal court broke up the company into one long distance company and seven regional telephone companies, known as "baby bells", arguing that competition should replace the monopoly for the benefit of consumers and the economy. The competition led to a complete modernization of the sector.

More changes took place in the 1990s. The influential 'efficiency model' that was widely accepted for some time was challenged by the idea that a proper analysis of efficiency goals showed that 'efficiency' demanded tighter anti-trust controls, not stubborn non-intervention. This shift was clearly seen in a 1992 Supreme Court case[6] which concerned tying arrangements in the sale and service of photocopying machines. The learned Justice issued a warning about the dangers of relying on economic theory as a substitute for what he called, "actual market realities", such as the harm done to companies who were shut out of the market. Joint guidelines on mergers issued in 1992 by the Federal Trade Commission and the Justice Department reflected this new stance, which looked more closely at competitive effects and tightened requirements. Most recently, the Department of Justice took Bill Gates' Microsoft Corporation to court. It was alleged that Microsoft abused monopoly power in its handling of operating systems and web browser sales. The main issue was whether Microsoft was allowed to bundle its Internet Explorer web browser software with its Microsoft Windows operating system. The case was eventually settled although critics and observers continue to weigh in on its impact. The US evolution continues.

The Evolution Of Competition Law In The Jamaican Context

As we have seen, competition law in the US never remains static. Although the US has passed seemingly cohesive laws, their enforcement has been sporadic and largely dependent on the attitude and ideologies of the sitting administration. While it may seem at first glance that the frequent shifts have resulted in inconsistent treatment of businesses and a lack of certainty, what they actually reflect is the reality of a democracy keeping pace with social, economic and political realities. This evolution has actually given birth to one of the strongest bodies of competition law in the industrialized world.

What one can gather from the evolution of competition law in the US is that the letter of the law alone is not sufficient. It is imperative that competition law receive the full backing of the administration. Since the advent of Jamaica's competition legislation in 1993, there has been no change in the country's political administration. As such, we have not, as yet, had the fluctuations in ideology and resultant impact on competition law that is evident in the U.S. We also have not had the extra push, for better or for worse, which comes with political change. Competition law, as we have seen, is often an amalgam of legal procedure and political will. In the US judicial interpretation of the *Sherman Anti- Trust Act* could be said to have departed from what was originally intended by introducing the "rule of reason" approach, but it is undeniable that this development has made an indelible mark on the canvas of competition jurisprudence in the US and the rest of the world. Indeed, it is judicial interpretation of Jamaica's *Fair Competition Act* that is driving the current efforts to amend the Act to address deficiencies, particularly in relation to the principles of natural justice. No doubt the next wave of political interest will also assist in taking Jamaica's competition law to another level.

Karen L. Duncan is a Legal Officer at the Fair Trading Commission (FTC).

[1] 221 U.S 1, 31 S.ct 502, SS L Ed. 619
[2] 251 U.S. 417, 40 S.Ct. 293, 64 L. Ed. 343 (1920)
[3] *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 82 S.Ct. 1502, 8 L. Ed. 2d 510
[4] *United States* v. *Arnold, Schwinn & Co.*, 388 U.S. 365, 87 S. Ct. 1856, 18 L. Ed. 2d 1249
[5] *Brunswick Corp.* v. *Pueblo Bowl-O-Mat*, 429 U.S. 477, 97 S. Ct. 690, 50 L. Ed. 2d 701
[6] *Eastman Kodak Co.* v. *Image Technical Services*. 504 U.S. 451, 112 S. Ct. 2072, 119 L. Ed. 2d 265

Competition Policy In The Economic Partnership Agreement (EPA): Can CARIFORUM Be A Victor?

Introduction

It would be an understatement to say that there is a weak competition policy dynamic within the CARIFORUM region. Out of the fifteen CARICOM member states, only two, Jamaica and Barbados have enacted appropriate legislation coupled with the creation of the necessary institutional bodies to administer it. A third member state, Trinidad and Tobago, has recently enacted competition legislation but is yet to get its institutional mechanism in place. There are no known current legislative programmes underway in the other CARICOM member states. This is notwithstanding the efforts of the CARICOM Secretariat to prepare a Draft Model Law on Competition Policy for adoption by the region. The Dominican Republic has prepared Draft legislation which when enacted will, like the Jamaica legislation, proscribe the most commonly recognized forms of anti-competitive conduct such as restrictive commercial agreements and abuses of a dominant economic position.

An examination of the reasons for the lethargy in taking up the issue of competition policy at the national level, is instructive for an assessment of whether Competition Policy should really have been included as one of the subjects for negotiation on the EPA agenda. The predominant reason given by Member State representatives is that the resource constraints of the countries militate against any commitment to setting up and administering expensive legislative machinery. A second reason strongly related to the first, is that in light of the small size of national markets, the need for a body of law regulating market behavior is unnecessary and the costs associated with same cannot be readily justified. The combination of these two reasons has served to make competition policy overall a low priority for regional legislators.

It is beyond debate, that significant resource constraints exist in the region, which have hampered Member States' efforts to keep in line with international trends. This Article will argue however, that rather than reciting the lack of resources as a continued obstacle to our being able to adopt commitments in international negotiations, a carefully crafted EPA competition policy chapter can have tremendous pro-development deliverables. Thus said, the prospect of "development" will be key to overcoming the regional inertia.

The EPA Negotiations: Substantive Issues

The substantive negotiations between the CARIFORUM and the European Union concerning the conclusion of an Economic Partnership Agreement (EPA) is currently in its third phase, treating with

substantive negotiation issues. At the beginning of this phase, there had been an agreement between the EU and CARIFORUM that there would be no a *priori* exclusions from the negotiations without prejudice however to what is eventually included in the final agreement. This means that the region is under an obligation to negotiate competition policy in the EPA but these negotiations need not lead to an ultimate agreement for the inclusion of a competition policy chapter.

As the negotiations have progressed, several non governmental entities and academics have weighed in on the process, opining that the EU through the EPA process, has been attempting to get its developing ACP partners to accept commitments in areas which may prove to be beyond their current capabilities to administer and which they have already rejected at the multilateral level. The allusion here is to the fall out in the WTO on the so called Singapore Issues, evidenced at the 2003 Cancun Ministerial Conference, when developing countries en masse, rejected the inclusion of these issues as matters which should be subject to multilateral rules, in the absence of a willingness by developed countries to make significant concessions on issues such as agricultural subsidies and greater market access opportunities. These commentators suggest therefore that the ACP group should negotiate these matters only if they choose to and feel competent enough to do so, based upon their economic and political realities. Put in this manner, the matter is clearly one of developing countries identifying their resource constraints and tailoring the bilateral arrangement to respect these constraints.

Through a process of regional consultation in technical working groups, CARIFORUM has decided that the competition policy negotiations should entail obligations on the Parties to the EPA to implement and maintain regimes proscribing the most commonly recognized forms of anti-competitive behaviour on the part of non governmental enterprises. Such an obligation is clearly not one which will prove unduly onerous to the region, given the existing obligation in Article 170 of the Revised Treaty of Chaguaramas for CARICOM member states to establish the legislative regimes and institutional structures necessary to ensure coherence in the "Community Competition Policy". CARIFORUM has also agreed upon the need to have provisions grounding cooperation between the parties on enforcement activities including the exchange of non confidential information. Thus far, the EU has been ad idem with CARIFORUM on these matters defining the scope of the possible competition policy chapter.

For a long time, the bone of contention between the two sides, had been the EC's insistence that enforcement cooperation could be undertaken only if there was one interlocutor for CARIFORUM, with whom the European Commission could co-operate on enforcement activities. It is with this demand, that the CARIFORUM adopted a position that to make a commitment to establish a single interlocutor, would be tantamount to negotiating at a level which was neither appropriate nor acceptable in light of the region's political realities.

The EC's request, had been tied to its vision of the EPA fostering and

reinforcing regional integration in CARIFORUM, a vision which for its part, was tantamount to the establishment of a pan-CARIFORUM wide Customs Union and the acceptance by all CARIFORUM members of common institutions. Given that the Dominican Republic is exclusive to the CARICOM integration movement and therefore not a subscriber to CARICOM institutions, any CARIFORUM commitment to the use of a single interlocutor would have the effect of the EPA being able to push the region into a level of integration that the political directorate has up to the present time, deemed to be inappropriate. EU negotiators though having long professed to being sensitive to regional political realities, have only recently displayed this sensitivity, by agreeing in principle to the need for more than one CARIFORUM institution being able to invoke the enforcement cooperation provisions of the EPA.

Fostering Development

The EPA will be a reciprocal trading arrangement, which means that for the first time in the EU/ACP relationship, the ACP countries including those comprising CARIFORUM will be required to grant market access concessions to the EU. It must be borne in mind, that in accordance with article XXIV of the General Agreement on Tariffs and Trade (GATT) 1994, whether the EPA is adjudged to be WTO compatible, will be dependent upon whether among other things, it satisfies the criteria of effecting a substantial liberalization of all trade between the parties to the agreement. The region should be prepared for the possibility of deep liberalisation commitments which may in effect radically alter the structure of our markets.

In light of this dynamic, an effective competition policy regime will be required, to ensure that the enterprises in both the EU and CARIFORUM do not attempt to derail the process and benefits of trade liberalization by raising barriers to entry constituted by anticompetitive conduct. Given that the EU already has a strong and effective competition policy regime, the onus will be on CARIFORUM to establish a comprehensive regime of equal effectiveness. For us therefore, having committed to trade liberalization with its dangers, the realization that CARIFORUM must be a demander of a competition policy regime in the EPA agenda is a foregone conclusion.

To assist us in obtaining the strong regimes which will inevitably be necessary, CARIFORUM must ensure that the EPA delivers significant levels of development support. The primary basis upon which the thrust for development support can be anchored, is the general consensus that the EPA must foster the process of CARIFORUM development. Development in this context, must not remain an amorphous and romantic sounding concept but must be translated into clearly identifying a set of development benchmarks for the region.

The task of identifying the necessary benchmarks with respect to Competition policy is made the easier by the fact that for the most part, CARIFORUM has nascent and non existent regimes in this area. Basic developmental tools which we require are therefore:

(i) assistance in drafting legislation
(ii) assistance in making operational the institutions needed to administer the

legislation. This might necessitate EC commitment to provide development financing.

(iii) training in administrative procedures and substantive determinative rules.

CARIFORUM states must not be hesitant to share their idea for further development measures as it is the member states themselves who are best placed to make determinations as to what they require in order to follow through on the commitments they are about to undertake in the EPA.

Conclusion

It is easy to clamour for development support without appreciating that the provision of such support must however be tied to an obligation to have specific deliverables. This is in keeping with the notion of good governance that has pervaded the ACP /EU relationship since the Lome Conventions and will also infuse the EPA. Making good on our promise for deliverables, may actually place the region in good stead to obtain further support, especially in line with a proposed formula that will see the EPA Institutions having the power to examine the areas in which CARIFORUM has made use of support measures and decide upon the need to make further resources available. Such a mechanism will ensure that the EPA is not a static instrument, but rather a flexible development tool. Such a dynamic EPA will enable CARIFORUM to reap true and sustained rewards from the negotiations.

Audel Cunningham is a Legal Advisor to Caribbean Regional Negotiating Machinery.

Consumers and Market Uncertainties
By Consumer Affairs Commission (CAC)

As products become more complex, and the imbalance of knowledge or gap in the information available to well-informed suppliers and less informed buyers widens, the potential for abuse by the former group, increases. Consumer protection - initiatives aimed at safeguarding the rights of consumers - requires a proper framework that comprises fair rules in the conduct of business and which protects the interest of consumers. Secondly, it involves effective means of applying these rules in practice. Thirdly, consumer protection involves empowerment of consumers themselves and their representatives (Pantelouri 2001). If consumers are not in a position to make the proper, informed choices, then incentives for greater efficiency on the part of businesses are minimised, and the economy as a whole loses.

Therefore, we may argue that well-informed, discriminating consumers are good for the economy. Addressing imbalances in the availability of information prior to the execution of transactions (ex ante) will therefore be vital in achieving an equitable distribution of welfare gains in a liberalized economy. That is, not only are firms able to enter the market and compete for the profits previously earned by only a few operators, but consumers are able to acquire goods and services that

meet the needs for which they were acquired. While the recently promulgated Consumer Protection Act (2005) is expected to address some of the observed distortions, by addressing matters such as inadequate information (Part IV) and misleading and deceptive conduct… etc (Part V), a number of gaps remain. These gaps may or may not require legislation but need to be addressed nonetheless, in a definitive and purposeful manner.

Background to Market Liberalisation in Jamaica

Structural Adjustment Programmes (SAPs) of the late 80s and 90s have had an 'opening-up' effect on the Jamaican economy. With SAPs attendant thrust towards liberalisation and a strong dependence on the market for the determination of supply, demand and price, much of government's role in establishing price controls has been made redundant; and has been replaced with a charge to monitor and empower the consuming side of the market economy, through the provision of information and dispute resolution services.

And indeed the benefits of liberalisation are manifest; one only has to consider the telecoms market. The disadvantages are however sometimes latent, and if left unchecked, have the potential to reduce or even eliminate the gains thus acquired.

Government Intervention

The Consumer Affairs Commission (CAC), as the government body that was moulded out of an entity critical in maintaining price controls up to the 1990s, has been imbued with both a "rod and a staff", to balance the interests of consumer and business in this liberalised market. Fierce Competition alone does not ensure consumer protection. With official separation of consumer complaints handling functions from the country's competition authority, the Fair Trading Commission, there is now an increased urgency for the CAC to effectively execute its mandate of empowering consumers[1]. Empowered consumers are able to influence businesses to act not only in their own interest but also in the interest of those who *keep* them in business. Similarly, the agency has a responsibility to ensure fairness and to prevent unscrupulous practices on the part of consumers, which can also ultimately reduce consumer welfare when firms are driven out of business. Consumer welfare reduces, for example, when there is not enough rivalry among businesses and hence no perceived need to structure operations in a way that benefits and hence makes a particular product or service accessible to broad spectrum of consumers, and not only the wealthy.

Role of the CAC

Standard Economic theory suggests that important elements for the optimal functioning of a market, are, *inter alia*, (1) well-informed consumers, (2) no uncertainties, (3) independence in agents' consumption and production activities (hence no externalities from consumption or production), and (4) self interested agents (e.g. buyers).

[1]Further to Ministerial order in June 2005, the FTC handles complaints with "significant competition issues" while the CAC is mandated to address complaints that affect individual consumers' rights and seek redress as the need requires.

The role of the CAC is particularly vital to the achievement of criterion number (1). In the academic literature, the non-fulfilment of this criterion creates *imperfect information* and in some instances *asymmetric information*. Empowering consumers with information comes in recognition of the fact that information in this sense is essentially a public good; where a reliance on private institutions for its provision will lead to sub-optimal supplies of this commodity (Cohen 2001). One negative manifestation of a lack of information is the prevalence of complaints, which stem from poorly informed choices made by consumers. Some of whom are unable to effectively seek redress through the formal court system or get legal guidance prior to effecting certain transactions. This then creates a need for Complaints Resolution Services; an element of business operation that is quite often not factored into total operating cost, but requires the utilization of resource nonetheless. Such neglect of a basic feature of good customer service then becomes a function that is relegated to non-private bodies such as the CAC. Most recent data shows the CAC settling over 1,839[2] complaints for the Financial Year 2005/06, with majority relating to the Automotive (17.2%) and Appliance (27.4%) sectors. The other manifestation of uncertainties is an increase in transaction costs, which result partly from increasingly complex rules, which govern transactions between buyers, and sellers. These costs involve additional resources, which have to be expended to acquire the information needed to make optimal choices. Two potential areas for further research may be with respect to Hire Purchase and Lease Agreements as well as Housing Development Projects.

The Commission, therefore, in its role of consumer protection has the foremost responsibility of addressing this deficit, which ultimately affects the proper functioning of the market.

Institutions

Notwithstanding theories of the challenges posed by 'market failure' *vs* 'government failure', the globalisation driven Jamaican market of Private Final Consumption Expenditure of J$440.755b[3] in 2005, has elicited a need to ensure that there is an appropriate framework to achieving equity in the distribution of the gains from competetion. But should regulation be limited solely to formal institutions or is there any merit to encouraging the development of informal institutions; institutions which are able to reduce uncertainties and achieve equity in the distribution of the gains from competition? What might these informal institutions entail? New Institutional Economics suggests for example, 'social norms' as instruments to achieve compliance; norms that create checks and balances in a society, in which the market is only one part.

In a CAC 2001 study, of the legislative framework operating in neighbouring Caribbean territories, the response from one representative was particularly note-

[2] This represents a 93% settlement rate

[3] With approximately 1/5 of the population falling below the poverty line of $47,128.00 (2002 fig.) it is further evident that greater urgency should be given to ensuring that consumers are able to get the most out of each dollar spent.

worthy. In the view of this respondent, in his country of under 13,000 persons, where the number of domestic businesses were relatively small, and business operators had very close relationships with their customers, legislation was not perceived as the 'best" route to govern relationships between buyers and sellers. The reason for this might include, but not be limited to agents' greater ability to access information from persons, who essentially were their neighbours and further, where measures to achieve compliance might even include social exclusion. Difficulties exist however in the governance of businesses where social cohesion is not an adequate incentive. So what are possible avenues for government intervention? These may include:

- encouraging the formation of consumer bodies such as the National Consumers' League and the Consumer Advisory Committee on Utilities, which strengthen the bargaining power of consumers *vis a vis* businesses especially large scale multinationals and monopolies. The recent initiative of the Consumer Affairs Commission to establish Consumer Clubs at secondary level schools, is a move in the right direction;
- facilitating equity in the governance of relationships between firms, consumers and regulators by making the policy setting process more participatory. This means giving greater recognition to the input of consumers and businesses in the process of policy formulation and its subsequent implementation and enforcement. This may include streamlining interactions with industry players to get an appreciation of new modes of operating and helping them to understand how these align with legislations such as the Consumer Protection Act;
- highlighting businesses that operate as socially responsible agents;
- analyzing the implications of policy changes with respect to business and government operations and constructing Information, Education and Communication (IEC) programmes accordingly; providing suggestions to consumers as to how to legally take advantage of the new opportunities to be had from the changes and how to minimize transaction costs resulting from uncertainties. This of course may involve analyses of contracts developed by businesses that are quite often worded in highly complex legal jargon; and working with firms to develop more simplified material, which may be of greater utility to consumers especially those with literacy challenges.

Conclusion

Consumer Protection in an open market becomes vital when there is uneven distribution of power between buyers and sellers. When this asymmetry in power is as a result of unequal access to information about products and services, an appropriate response is required, which may or may not involve legislative interventions to minimize uncertainties. Such responses however, should most certainly embrace the **effective** participation of agents on both sides of the market and particularly the weaker agent.

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Balancing Competition Enforcement and Regulation: *Experience of the Barbados Fair Trading Commission*

Introduction

The challenge of directly regulating the provision of certain services, while at the same time encouraging and enforcing competitive markets is one that all modern economies have to grapple. Governments must be mindful of the conflicting signals they may send to their respective business communities as they engage these different approaches towards the overall attainment of improved consumer welfare. The challenge is similarly faced by regional territories especially now with the introduction of domestic competition laws, whereby states are called upon to facilitate both objectives simultaneously.

In Barbados the challenge of regulation and competition enforcement is also present, as Government seeks to openly promote fair competition while directly regulating a number of companies, but here the experience can be even more acutely observed because the two objectives are pursued within the mandate of a single agency.

In Barbados the Fair Trading Commission (the Commission) since its inception in 2001 has been mandated to regulate a number of Utility Service providers including; Telecommunications, Electricity, and Natural Gas. Since January 2003 the Commission is required also to promote and enforce fair and healthy competition across all sectors of the economy.

This arrangement produces a number of practical challenges and conflicts, while also creating certain advantages towards the realization of both objectives. This short paper discusses the challenge of concurrently pursuing these two objectives against the backdrop of the overall Barbadian experience.

Regulation versus Competition Promotion

Regulation in this context can be viewed as an attempt by a regulator to make a regulated utility operate as though it were in a competitive environment. In this regard the regulator seeks to ensure that the prices or rates charged by the service provider are prudent and cost oriented, while at the same time ensuring that the quality of its services are not compromised. As a regulator in this context the Commission, on the one hand must implicitly adopt a very hands-on approach in the business of the service provider, becoming directly involved in its rate setting and service quality processes.

On the other hand the Commission as a promoter and enforcer of fair competition is not expected to focus on the interest of a single business, but must ensure specifically that the rules of fair competition are observed. The approach therefore becomes one of a hands-off nature, first promoting and encouraging fair business practices and intervening in the market only where individual practices or policies are likely to lead to some form of market or competition failure. When the Commission intervenes in this respect, it is expected only to eliminate the harmful conduct and revert to its referee and promoter status.

In administering these two roles the Commission is challenged with seeking to ensure that internally it applies the principles and rules consistent with either the hands-off enforcement approach or the hands-on regulatory approach in the appropriate circumstances, and while doing this it must ensure that its directives in one pursuit does not restrict or compromise its objectives in its other pursuit. Externally, the Commission must also ensure that its stakeholders and consumers alike are clear as to its authorised powers and responsibilities, given the capacity in which it is functioning at the time, and that the signals communicated are consistent with sound governance and supportive of improved consumer welfare.

Local Experience

At the Commission, these challenges are observed most acutely in the telecommunications market. Though liberalization in this market was effected in February 2005, competition within the individual services cannot yet be considered effective. In some instances the incumbent after liberalization is still effectively the dominant provider of specific services. These services, (i.e. the provision of International telecommunication service, and the provision of residential telecommunication service) are regulated by the Commission while at the same time, because of the introduction of competition, they are monitored under the Fair Competition Act to ensure that competition remains fair. In this regard the Service Provider while being regulated also operates in a competitive environment and has to relate to the Commission in both of its capacities.

When the Commission was required to establish the rules that would govern the behaviour of the incumbent under the present Price Cap regulatory mechanism, the regulated company was required by the Commission, to give public notice of any proposed price increases or decreases prior to the introduction of any such planned rate changes. This was an obligation required only of the incumbent. In such circumstances if the notice period given was too long, the incumbent's competitors could counter such an announced decrease with a price decrease of their own in order to frustrate the incumbent's efforts and capture critical demand. The application of rules of this nature would therefore be disadvantageous to the competitive efforts of the incumbent, while establishing inconsistent rules of competition in the market.

At the same time while regulating the telecommunications Service Provider, the Commission has on a number of occasions been faced with complaints of unfair competition by and against the incumbent, and investigations pursuant to these complaints have sometimes been undertaken. All these investigations have to be conducted at arms length with all the parties involved, completely according to protocol. Neither the complainant nor competitor can be afforded any special concessions or considerations because of their association or interaction with the Commission in its regulatory capacity. Failure to observe such strict protocol could lead to claims of inconsistency and bias.

In relating to the regulated Service Provider, the Commission must always be mindful that it establishes the context in which a particular matter will be handled. A complaint of unfair competition coming

coming from a regulated service provider must be treated like a complaint from any competitor. The same investigation procedures and rules of information sharing must be applied. The Commission also has to be extremely careful to ensure that while regulating the incumbent provider, it does not require behaviours that would compromise the competitive climate that it is seeking to promote in the same markets.

Managing the challenges

The challenge of successfully managing both pursuits is experienced in most industries in which there is a Government owned corporation operating in the private sector directly competing against other privately operated enterprises. In these circumstances the Government run organization, regulated directly by a Ministry, or independent regulatory agency, often benefits from particular subsidies, or relaxed laws aimed at ensuring that the publicly owned company remains viable. The Commission has received complaints alleging unfair competition in this regard. In facilitating an environment where the private sector is of the view that competition is unfair and that a Government owned company is being unfairly protected at the expense of fair competition, one runs the risk of a deterioration of confidence in the overall governance of these industries.

The example above demonstrates the potential challenges that could arise where mixed signals are sent to private sector companies who are being relied upon to generate growth in the economy. It also shows how important it is for the Commission, or independent regulators, to enforce principled standards, and be aware of the consequences of their rules and directives. Primarily the challenges are: internally, or regulator to regulator, to ensure a mutual understanding and awareness of the implications of the varied decisions each agency is likely to adopt; and externally, managing these processes to ensure that the public is sent the correct signals consistent with the promotion of competition and the overall objective of enhancement of consumer welfare.

In managing these challenges it is necessary that there be a continuous flow of information and education between the direct sector regulator and the promoter of competition, to ensure awareness of the implications of each directive. Here the Fair Trading Commission has the advantage of a common entity managing these pursuits, and this allows it to share and communicate information most effectively. This is an important practical advantage. Where the pursuits of regulation and competition enforcement have been vested in entirely separate entities such information sharing is unlikely. The advantage of the single agency arrangement also reduces the problem of overlapping jurisdiction and turf arguments.

Alternatively the Commission, moreso than an agency with a single mandate, must always be mindful that its association or interaction with a regulated entity does not in any way prevent it from being completely impartial and dispassionate when applying the rules of competition enforcement.

Regional territories Trinidad and Tobago and Guyana seeking to manage this challenge have included specific exemptions in their Competition legislations requiring the sector regulator

rather than the competition authority to manage all aspects of commercial activity relating to their particular utilities, including issues related to the enforcement of competition in the respective market. This certainly allows for a clear demarcation of jurisdiction. Whether such legislative streamlining will better manage the challenge is still to be determined.

At the end of the day both objectives of regulation and competition enforcement have as their ultimate goal the improvement of consumer welfare and continued development of the economy. These roles then, while seemingly conflicting are ultimately complementary and should be recognised as such, and where physical capacity and human skills are available may be most adequately managed in one entity.

DeCourcey Eversley is the Director of Fair Competition for the Barbados Fair Trading Commission

Using Import Data to Help Target Competition Policy Enforcement**

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Law enforcement, like all government activities, is subject to budget constraints. Given these constraints, how can a competition agency focus its efforts to promote consumer welfare most effectively?

One rational approach is to concentrate law enforcement efforts in sectors of the economy where competition is more vulnerable to anticompetitive activity by domestic suppliers. One way to do that is to carve out the industries where competitive forces are likely to prevail even if incumbent domestic suppliers withhold production. For example, it could be argued that if more than a few customers in a product market are served by imported goods, there is little need for competition law enforcement in that product market because any attempt to raise prices above the competitive level will prompt diversion of the product from international trade to the country with higher prices. If the country is small relative to the volume of world trade, diversion could easily swamp the price increase and drive prices back to the competitive level. And even in the case of large nations, diversion can prevent anticompetitive price increases by domestic suppliers.

Diversion could be carried out directly by importers or indirectly by retail customers engaging in arbitrage – purchasing in a low price area and reselling in a high price area. Under this approach, importers are regarded as existing suppliers in the market and their entire output, not just their imports to the particular country, is counted toward the market share of these firms. This can be the equivalent of treating the world or a large geographic region as the relevant geographic market. If market shares are calculated on this basis, concentration will be low which will provide another indication that competition law enforcement might better be focused elsewhere.

This mechanism for carving out markets where it is safest to deemphasize competition law enforcement –if there are significant imports, then there is no need for competition law enforcement – turns

out to be too simplistic. There are a host of reasons why the presence of substantial imports might not guarantee competitive prices. First, for example, the imported goods and services may be premium priced above domestically produced goods and services so that imports may not constrain increases in the prices of domestically produced goods. Second, diversion may be limited because of contractual obligations to supply customers in other countries or long-term marketing strategies in other countries. Third, prices already may be higher in other countries so that diversion is not likely to be profitable for importers.

Does this mean that information on imports is useless for focusing competition law enforcement? No—despite these drawbacks, import statistics can be useful. The most useful approach may be to consider how imports have responded to price changes in the past. There are challenges in applying this approach as well. One major problem is identifying past price changes. To identify and quantify past price changes that are specific to individual product markets can be extremely difficult and resource intensive, although this has not prevented efforts to conduct such research. But there is an alternative method to identify price changes. In particular, one can work with exchange rates changes—the price changes in one country stated in terms of the prices in other countries. This method examines how changes in exchange rates affect imports. (Note that these estimates are crude in the sense that they do not adjust for simultaneous price changes undertaken by domestic suppliers; for lags in trade adjustments; for variations in the exchange rates with respect to specific country pairs; or for changes in income elasticities.) An increase in exchange rates results in an increase in prices in one nation relative to those other nations in the same way that exercise of market power by domestic suppliers raises prices in that nation relative to prices in other nations. The primary difference is that an exchange rate increase effectively increases all prices simultaneously relative to prices in other countries, whereas domestic anticompetitive activity in a product market would only increase relative prices in that product market.

Past calculations of import elasticities for the United States surrounding the rapid increase in the value of the U.S. dollar in the early 1980s produced the results in the table below.

Hay, Hilke and Nelson pointed out that "…as the results in [the] table indicate, the percentage change in the value of imports was often less than the percentage change in the exchange rate, suggesting that in many industries there was not a surge of imports in response to the relative increase in U.S. prices—even in industries where imports were already present. Indeed, in several industries which [were not selected] for inclusion in [the table], there was an absolute decline in imports… Moreover, the elasticities reported in the third column of [the table] suggest that there is significant variation in import elasticities of supply across industries." More recent research has yielded similar results—low responsiveness of imports to exchange rate changes in several industries. Similar research regarding European trade patterns suggests that the United States is not alone in experiencing uneven import responses to domestic price changes.

Illustrated Import and Net Import Elasticities in the United States

Industry SIC	Industry Name	Gross Import Penetration Elasticity	Net Import Penetration Elasticity
2032	Canned Specialties	+ 0.73	+ 5.16
2211	Broadwoven Fabric Mills, Cotton	+ 0.09	+ 0.55
2221	Broadwoven Fabric Mills, Manmade Fiber & Silk	+ 0.07	-20.41
2283	Yarn Mills, Wool including Carpet & Rug Yarn	+ 1.46	+ 1.96
2383	Leather & Sheep Lined Clothing	+ 0.24	+0.31
2643	Bags, Except Textile Bags	+ 1.60	- 2.20
2654	Sanitary Food Containers	+ 4.88	- 0.90
2655	Fiber Cans, Tubes, Drums, and Similar Products	+ 5.09	+ 1.09
2711	Newspapers: Publishing & Printing	+ 0.52	+ 0.54
2841	Soap & Other Detergents, Except Specialty Cleaners	+ 0.27	- 1.40
2842	Specialty Cleaning, Polishing, & Sanitation Preparations	+ 1.17	- 0.34
2844	Perfumes, Cosmetics, and Other Toilet Preparations	+ 0.11	- 0.84
2879	Pesticides & Agricultural Chemicals, Not Elsewhere Classified	+ 0.07	+ 0.79
3316	Cold-Rolled Steel Sheet, Strip & Bars	+ 0.82	+ 1.01
3331	Primarily Smelting & Refining of Copper	+ 1.26	+ 1.25
3334	Primary Production of Aluminum	+ 0.35	+ 0.17
3411	Metal Cans	+ 0.10	- 4.82
3494	Valves & Pipe Fittings, Except Plumbers Brass Goods	+ 0.02	- 0.57
3541	Machine Tools, Metal Cutting types	+ 0.28	+ 1.65
3612	Power, Distribution & Specialty Transformers	+ 0.44	+ 1.61
3645	Residential Electric Lighting Fixtures	+ 0.05	- 2.06
3724	Aircraft Engines and Engine Parts	+ 1.30	- 1.80
3728	Aircraft Parts & Auxiliary Equipment, Not Elsewhere Classified	+ 3.07	+ 0.46
3843	Dental Equipment & Supplies	+ 0.56	+ 0.69

Source: G. Hay, J. Hilke, and P. Nelson, "Geographic Market Definition in an International Context," Chicago-Kent Law Review 64:3 (1989), pp. 711-739.

Under this approach, competition law enforcement activities could rationally be focused on product markets in which import activity has been insensitive to price increases, where exchange rate increases are used as the measured price increases. The import insensitive industries are likely to contain the markets in which domestic supply and demand conditions are the predominant factors determining domestic prices. In product markets in which imports are price sensitive, diversion will help to constraint efforts to exercise market power, by domestic suppliers. Further, it can be argued that in import sensitive product markets, anticompetitive price increases (that would impact import prices) are more likely to attract the attention of foreign competition law enforcement authorities because they involve large producers in these countries. The potential exception is when import activity is controlled by a collusive group of firms or nations that are exempt from foreign competition laws. In that case, diversion may not be a dependable protection for consumers in any nation. And, of course, if domestic suppliers can obtain protection through tariffs or quotas, imports will not protect consumers.

In conclusion, competition agencies may find it useful to employ information regarding the price sensitivity of imports in order to focus competition law enforcement resources on industries that are more vulnerable to anticompetitive activities by domestic suppliers. Industries with high levels of imports that are sensitive to domestic price increases are less likely to provide fertile ground for anticompetitive conduct by domestic suppliers.

Dr. John Hilke is an economics consultant with over 25 years experience in Antitrust, Regulation and Privatization Analysis and Testimony. He is currently contracted on a part time basis to provide consultancy services to the FTC under an IDB Project aimed at strengthening the Commission's Technical capacity. He can be contacted at jchilke@comcast.net.

STATISTICS

COMPLAINTS RECEIVED	Year Sept 2003/Aug 2004				Year Sept 2004/ Aug 2005				Year Sept 2005/ Aug 2006			
	BREACH											
PRODUCTS AND SERVICES	MA	NA	OAC	Other	MA	NA	OAC	Other	MA	NA	OAC	Other
Airline Services	5	-	-	1	4	-	-	1	3	-	-	-
Auto Parts & Accessories	8	2	-	-	9	-	-	-	5	-	-	-
Automobiles	83	5	-	1	69	-	-	1	17	-	-	-
Banking/ Financial Services	12	6	-	2	2	3	1	-	8	1	-	-
Clothing & Accessories	13	1	1	2	4	1	-	2	1	-	-	-
Computers	14	-	-	1	14	-	-	-	-	-	-	-
Construction/Home Repair Supplies	7	1	1	-	9	1	-	-	2	-	1	-
Cement									-	-	1	-
Education	17	3	-	1	7	-	-	-	2	-	-	-
Electronics	13	2	-	1	6	-	-	-	4	-	1	-
Food Items	7	1	-	-	4	-	-	1	1	-	-	-
Hardware Products	5	-	-	1	3	-	-	-	-	-	-	-
Household Appliances	40	-	1	1	16	-	-	1	6	-	-	-
Household Furnishings	20	1	1	-	13	-	-	1	1	-	-	-
Insurance[1]	7	1	-	3	7	1	-	1	2	-	-	1
Media	1	2	2	-	-	-	-	-	-	-	-	-
Office Equipment	2	-	-	-	-	-	-	-	-	-	-	-
Petroleum Products & Accessories	2	1	1	1	2	1	3	4	1	1	1	1
Professional & Specialist Services	11	1	-	2	6	-	-	-	1	-	-	-
Real Estate	-	4	-	-	6	2	-	-	1	2	1	-
Telecommunications Equipment	30	3	1	1	24	-	-	-	3	-	-	1
Telecommunications Services	27	4	11	-	17	2	2	1	12	3	4	-
Transportation Systems	2	-	-	-	2	-	2	-	-	-	-	1
Utilities	1	3	-	-	-	4	-	-	-	6	-	-
Other[2]	64	7	13	11	51	4	7	14	26	5	3	2
TOTAL	**391**	**48**	**32**	**29**	**275**	**19**	**15**	**27**	**96**	**16**	**12**	**6**

Key: MA - Misleading advertising; NA - Not under the act; OAC - Offence against competition; Other Request for opinion/information + Sale above advertised price + Failure to supply at a bargain price + Double ticketing

[1] Includes Health, and Life

[2] Includes Advertisement, Agricultural Products, Courier Services, Security Services, Entertainment and Auto Repair Services.

TEST YOUR KNOWLEDGE

1. Which of the following parties suffer when a firm advertises a product that it does not yet have in stock and ready for sale?
   (a) the firm
   (b) the consumer
   (c) the competitor
   (d) all the above
   (e) (a) and (b) only

2. A firm must be 'shooting itself in the foot' if it charges a price below the cost of production?
   (a) true
   (b) false

Business information

3. Which of the following is not a feature of a natural monopoly?
   (a) Economies of scale
   (b) High set-up costs
   (c) Government permits only one firm to operate in the market
   (d) Limited consumer base
   (e) All the above are features of a natural monopoly

4. Which of the following occurs among horizontal firms?
   (a) Market allocation
   (b) Price-margin squeeze
   (c) Multi-product forcing
   (d) Post-terminate non-compete clauses
   (e) Resale price maintenance

5. Which anticompetitive activity is best depicted by the proverb "*birds of a feather flock together*"?
   (a) Price discrimination
   (b) Cartel
   (c) Predatory pricing
   (d) Refusal to supply
   (e) Other

Consumer information

6. A certain contract between a manufacturer and distributor stipulates that at the end of the contract the distributor should not distribute or deal in any product that competes with those that are the subject of the referenced contract for a period of two years. This requirement is an example of:
   (a) An Evergreen clause
   (b) A Termination clause
   (c) A Post-termination non-compete clause
   (d) A Sunset clause
   (e) An illegal activity and should be reported to the FTC

YOUR RIGHTS

7. Competitors charging the same price is:
   (a) An illegal price fixing agreement
   (b) Parallelism
   (c) Allowed only if the industry is regulated
   (d) Legal if the number of players in the market is small
   (e) Perfectly legal as long as the firms set prices independently

8. Anti-competitive conducts can be unilateral or collusive. Which of the following is not a collusive conduct?
   (a) Price fixing
   (b) Bid-rigging
   (c) Market allocation
   (d) Predatory pricing
   (e) All the above are collusive conducts

LIGHTER SIDE

FTC PUZZLER: SUDOKU

Rules: Fill in the grid so that every row, every column, and every 3x3 box contains the letters named below the board. The first row will contain an English word.

	O		P				N	
			I		G			
I		G				T		O
E	G						M	N
			C		P			
P	N						T	I
N		E				M		T
			E		O			
	M				N		E	

T C G E P N M O I

Sudoku Solution

C	O	M	P	E	T	I	N	G
T	P	N	I	O	G	E	C	M
I	E	G	N	C	M	T	P	O
E	G	C	O	T	I	P	M	N
M	T	I	C	N	P	O	G	E
P	N	O	M	G	E	C	T	I
N	I	E	G	P	C	M	O	T
G	C	T	E	M	O	N	I	C
O	M	P	T	I	N	G	E	C

Test Your Knowledge Solutions

1. (d)
2. (b)
3. (c)
4. (a)
5. (b)
6. (c)
7. (e)
8. (d)

How Complaints Are Handled

Investigations are conducted, based on complaints received as well as upon the Commission's initiative, if it perceives that the competitive process is under threat.

Informants are encouraged to provide as much documentation as possible, in support of allegations made. This should include signed statements containing the relevant facts. All information provided is treated confidentially.

The activities undertaken by the Staff of the Commission include:

- ✓ conducting industry studies to assess the level of competition in an industry;
- ✓ developing and recommending remedies which will restore, retain or improve the level of competition in an industry;
- ✓ analyzing complaints and monitoring the extent to which anticompetitive behavior occurs;
- ✓ conducting public surveys to gather statistical information on specific industries; and
- ✓ preparing economic reports for publication.

Shirley Playfair Lecture 2006