COMPETITION MATTERS

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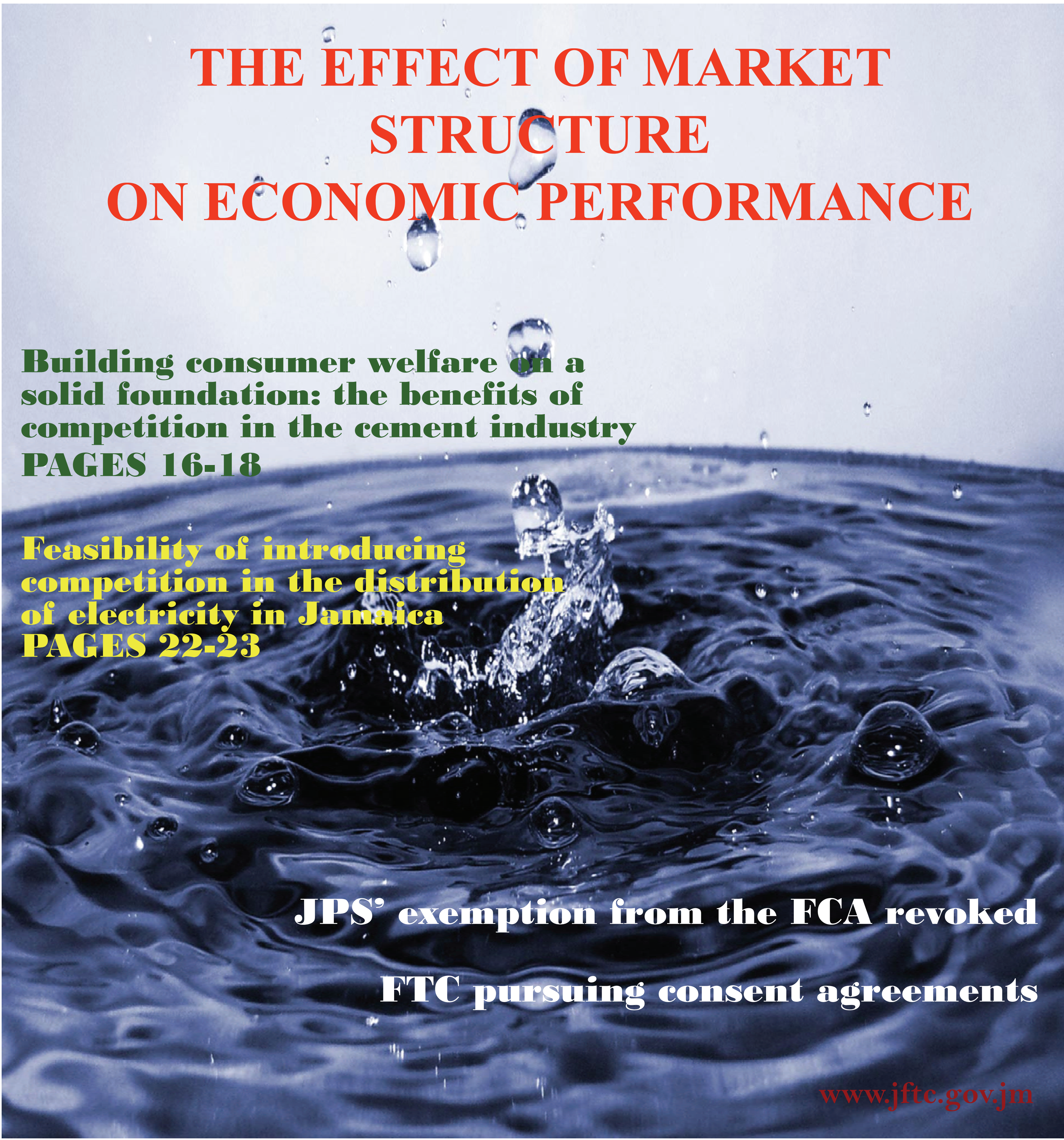

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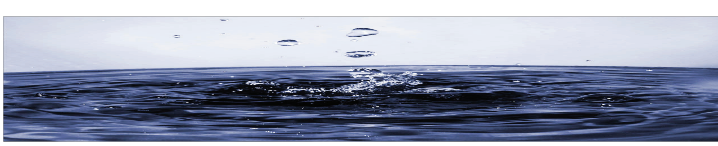

FOREWORD

In this issue of **Competition Matters**, we explore the theme *"Market Structure and Economic Performance"* with a view of making more visible to our readership, the crucial link between the structure and economic performance of markets. Market activities can be organized along a continuum of structures based on the performance of these markets. At one extreme lies the revered but elusive competitive market, the gold-standard of competition law, which offers consumers the best opportunity to access affordable, high quality products. At the other extreme is the much maligned monopoly market, the bane of competition law, which makes inefficient use of the economy's scarce productive resources. In keeping with the theme of this edition, the articles shed light on the effect of changing market structure on economic performance in industries such as private health insurance, retail banking and cement.

In addition, we share with you our valued readers, some of the matters we have undertaken during 2010 as we work tirelessly to unearth anticompetitive (antitrust) business practices. We also include a few matters that will be undertaken by the Commission in 2011.

We hope you enjoy reading this issue of **Competition Matters** as much as we enjoyed putting it together.

Happy reading!

Kristina Barrett & Paul Cooper

Magazine Coordinators

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JPS' exemption from the FCA revoked

THE MINISTER OF INDUSTRY, INVESTMENT & COMMERCE, the Honorable Karl Samuda, in the exercise of the power conferred upon him by Section 3(h) of the Fair Competition Act (FCA), has revoked the exemption order of 2001 which was granted to the Jamaica Public Service Company Limited (JPS). The revocation, which took effect July 21, 2010, means that the Fair Trading Commission now has jurisdiction to investigate the operations of the JPS pursuant to the FCA.

The JPS is the sole distributor of electricity in Jamaica. It operates 27 generating plants, 54 substations, and owns approximately 14,000 kilometres of distribution and transmission lines. It also purchases electricity from four independent power producers. The ownership structure of JPS is three-tiered: Marubeni Caribbean Power Holdings Inc. holds 80 percent ownership, the Government of Jamaica owns most of the remaining shares, and a group of minority shareholders maintains less than 1 percent.

In 2001 the then Minister of Industry, Commerce and Technology had declared that the FCA should not apply to the generation, transmission, distribution and supply of electricity by the JPS.

New website - www.jftc.gov.jm

DURING 2010, THE FTC's website team worked diligently to overhaul the Commission's website and is pleased to announce that the more user-friendly website, www.jftc.gov.jm, went live on October 1, 2010. The new site is easier to navigate as information is organized so that visitors can readily identify what they need. There are nine major categories on the website: news, about us, legislation, competition protection, consumer protection, publications, public register, research and reports.

The *news* category contains press releases, events, speeches/presentations as well as a news archive. The *about us* category contains information on the citizens charter and functions and powers of the FTC. This category also provides information on the Commissioners and Staff of the FTC. The *legislation* section contains the Fair Competition Act (FCA) which outlines the rules governing competition in Jamaica. The *competition protection* category contains Staff opinions on competition in various sectors in Jamaica and case reports which are prepared by the Staff upon the completion of an investigation. The *consumer protection* category contains frequently asked questions as well as prohibitions under the FCA. The *publications* category contains annual newsletters, quarterly newsletters, pamphlets and competition stories (a book for children). The *public register* category contains consent agreements between the FTC and other parties, court judgements, commission decisions and authorizations given by the FTC. The *research* category contains industry studies and consumer welfare studies that have been or will be undertaken by the FTC. The *reports* section contains annual reports and statistical reports.

From the homepage, the public can now conveniently submit complaints to the FTC. A new feature, also present on the homepage is the 'request for information' tab which allows persons the ease and flexibility to request information from the FTC on matters relating to competition law and policy.

FTC tackles telecoms complaints

THE FTC CONTINUES to be vigilant in monitoring the marketing of products and services by telecommunication service providers. During the period January to November 2010, the FTC investigated 148 complaints relating to telecommunication services. Of that amount 123 relate to allegations of misleading advertising and 14 relate to allegations of price fixing, price discrimination and excessive pricing with respect to wholesale rates. The remainder involve requests for information and matters which fall outside the jurisdiction of the FCA.

The misleading advertising complaints include issues relating to expiration of call credit, non-coverage of internet service, bonus credit and SIM card exchange promotions, defective equipment, free call time, changes to product offering as well as inadequate stock levels of promotional items. Eighty-six of the 148 complaints were resolved over the same period. FTC's intervention has resulted in the following actions by service providers:

- Advertisements were pulled from the air
- Advertisements were modified
- Call credit validity periods were adjusted
- Defective equipment was replaced
- Consumers were refunded
- Stock levels were maintained to adequately support promotional offerings
- Treatment of rollover minutes was modified

With respect to allegations regarding competition issues, those complaints are being investigated to determine whether there is any likely breach of the FCA; and if there is, what is the most appropriate action to restore and promote competition in the sector.

The sector is such that rivals have to purchase services from each other, for example interconnection services. These types of relationship raise competition issues, especially in situations where bargaining power is unevenly distributed. The FTC believes that there may be legitimate causes to modify the way in which some of those services are regulated.‡

FTC pursuing Consent Agreements

THE FTC IS CURRENTLY pursuing Consent Agreements with four respondents: a major supplier of appliances, an educational institution, a real estate developer and a provider of eye care products. All four matters relate to possible breaches of section 37 of the Fair Competition Act (FCA), which addresses misleading advertising.

With respect to the appliances supplier, the FTC has received complaints that the supplier failed to supply items at the prices at which they were advertised. In the matter concerning the educational institution, the allegations relate to the failure of the institution to honor commitments made to students; while in the case of the real estate developer, house purchasers were not provided with several fixtures which were stipulated in their Sales Agreements. The provider of eye care products has published several advertisements which the Staff of the FTC has determined to be false and or misleading in a material respect. Matters of these nature affect consumers not only directly but also in an indirect way as they distort the competitive environment within which all enterprises operate.

In general, the FTC enters into Consent Agreements with Respondents, on the recommendation of the Staff, in situations where the Staff believes that the FCA has been breached; where several factors in the Regulations have been considered; and the Respondents are amenable to settling the matter out of Court. These agreements usually require that the Respondent commit to not repeating the offensive conduct, issue a public apology, provide redress to the Informant(s) as well as pay the Commission's costs.

The FCA allows for a fine of up to $5 million in the case of an enterprise and up to $1 million in the case of an individual, where the Court determines that the FCA has been breached.‡

PROFILE

ROBERT COLLIE, an Attorney-at-Law, was appointed Commissioner of the Fair Trading Commission by the Minister of Industry, Investment & Commerce in April 2010. He holds a Bachelor of Laws, LL.B (Hons.) degree from the University of the West Indies; and was called to the Jamaican Bar in 2006.

He is the Jamaica Independence (Male) Scholar for the year 2001. This award is given to the male student with the second highest Cambridge Advanced Levels score in Jamaica. He also received the Michael March Memorial Prize from the Norman Manley Law School for outstanding performance in the Law of Remedies.

A member of the Commercial Law, the Social Affairs and the Civil Procedure and Practice Committees of the Jamaican Bar Association, Mr. Collie sits on the Boards of Directors of the Jamaica Foundation for Lifelong Learning, the Jamaica Intellectual Property Organisation and the Jamaica 4H Clubs. He is also member of the Litigation department of the Law firm Myers, Fletcher and Gordon, attorneys-at-law.

The other Commissioners of the FTC are: Mrs. Dorothy Carter-Bradford, Mr. Jasper Burnett and Mr. Christian Tavares-Finson. The Chairman is Dr. Derrick McKoy.

Commercial banking sector study completed

THE FTC HAS COMPLETED ITS MARKET STUDY on bank fees and charges. The objective of the study was to characterize the nature and extent of competition within the commercial banking sector in Jamaica, with particular emphasis on services ancillary to the sector's core function as a financial intermediary. The goal of the study is to enhance competition within the sector since competition, more so than other means of organizing economic activities, provides the proper incentives for suppliers to meet consumers' demand for affordable, high quality services.

The main finding is that the sector is highly concentrated and not as competitive as it could be. The limited competition seems to be partly as a result of the structure of the industry and the lack of information on the part of consumers, which in turn affects their ability to make informed choices.

There are currently seven commercial banks operating in Jamaica. In terms of deposits, assets and revenue, the two largest banks, National Commercial Bank and the Bank of Nova Scotia Jamaica, have a combined market share of over 70 percent; and the third largest, RBTT Jamaica Limited, is approximately one-fourth the size of the largest bank. In terms of branch network, 65 percent of all locations are controlled by the two largest banks; and these two banks are the only ones present in several geographic locations.

It was found that the commercial banks' main income source is from interest charges, which contributes over 60 percent (and in some cases almost 80 percent) to total revenue. Income from fees and charges represents between 15 to 20 percent of total revenue for the larger banks; and between 7 to 16 percent of revenue for the 5 smaller banks. Since 2005, there has been a steady increase in the level of fees and charges; and the difference between the highest and the lowest average fees, in real terms, has increased significantly between 2005 and 2009. This is suggestive of a lessening of competitive constraints faced by the larger banks.

To improve and promote competition within the sector, the FTC recommends that mechanisms be put in place to make it easier for consumers to access information about banking services. This may take the form of requiring that the banks provide more and certain critical information to customers, which will make it easier for consumers to search for and interpret relevant information. More specifically, the FTC recommends that banks should (i) make consumers aware of the relevant fees prior to approval of transactions; (ii) inform consumers of ways in which they may avoid fees; and (iii) outline on statements all relevant fees and charges along with the services or transactions to which those fees and charges relate. There must be no hidden fees.

It is also recommended that mechanisms be put in place to make it easier for consumers to switch banks. For services such as accessing credit facilities, switching costs may be high; and a person or company's historical relationship is an important factor in the assessment of exposure to risk. Business customers may therefore be reluctant to switch banks, especially if they have been with a particular bank for a while. For switching to be encouraged, mechanisms should be created to rate the credit worthiness of individuals and businesses. A Credit Bureau is therefore a positive step in this direction.‡

Merger review to be implemented in the CSME

ON OCTOBER 25, 2010, representatives from CARICOM member states participated in a Meeting held in Barbados to review the Draft Analytical Report from a consultancy to recommend a policy for the treatment of mergers and acquisition in the Caricom Single Market and Economy (CSME).

The consultancy is part of an overarching CARICOM project aimed at ensuring that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct. The scope of the work performed by the consultant is to develop and deliver recommendation for a policy on an internally consistent regime for treating mergers and acquisitions in the CSME. In developing the recommendations, the consultant met with relevant parties in Barbados, Belize, Guyana, Jamaica, Saint Lucia, Suriname Trinidad & Tobago and the Organization of Eastern Caribbean States (OECS). Jamaica was represented by the Competition Bureau Chief of the Fair Trading Commission.

There was general consensus among the countries represented at the Meeting with each participant agreeing with the substantive issues articulated in the 13 point recommendation including, among others, that merger review provisions should be enacted at the regional and national levels across the CSME. The final draft was expected to have been submitted to CARICOM by November 11, 2010.

It should be noted that of the seven CARICOM countries with competition law legislation, only Barbados and Trinidad & Tobago address merger review provisions in their laws.‡

11th Annual *Shirley Playfair* Lecture

THE ELEVENTH LECTURE in the Annual Shirley Playfair Lecture Series was held on Thursday, September 9, 2010 at the Jamaica Pegasus Hotel. The theme was "Competition and Regulation in the Banking Sector"; and the speakers were the Honorable Audley Shaw, Minister of Finance & the Public Service, and Mr. Bruce Bowen, President and Chief Executive Officer of the Bank of Nova Scotia Jamaica Limited.

The programme started at 3:55 pm with Welcome and Opening Remarks from Dr. Derrick McKoy, Chairman of the FTC, followed by remarks from the Honorable Michael Stern, Minister of State in the Ministry of Industry Investment & Commerce.

The Honorable Audley Shaw

Minister Shaw's presentation addressed the need for growth of the economy, as the ultimate and only solution to our economic dilemma. He emphasized that the financial services sector and the commercial banks have a critical role as the economy is nurtured to good health. He urged banks to implement measures to improve efficiency and competitiveness; and he encouraged them to seek new technological methods outside the traditional bank client/teller contact in relation to how clients carry out their transactions.

Mr. Bruce Bowen, while acknowledging the special position held by commercial banks in the financial sector, pointed to the other institutions (e.g. credit unions and building societies) with which banks compete. He raised the point that the regulation of some financial services will necessarily lead to an adjustment in the pricing strategy of banks in relation to non-regulated services to compensate for any fall out in revenue.

The full presentation made by each speaker is available on the FTC website, www.jftc.gov.jm.

Following the Lecture, a vibrant, interesting and provocative discussion ensued in which several members of the audience posed questions and directed comments to the speakers. This Discussion session was moderated by the Chairman and lasted for approximately 30 minutes.

The Lecture was well attended. Several financial institutions were represented, such as the National Commercial Bank, Jamaica National Building Society and the Credit Union League. Other attendees include representative of Government Ministries and Agencies, the business community, legal fraternity and the media. Comments and questions from these representatives were quite instructive; and therefore spurred further interests and discussions.

Mr. Bruce Bowen

In the hour preceding the Lecture, both Chairman McKoy and Mr. David Miller, Executive Director of the FTC, were interviewed on Power 106's radio talk show "*Both Sides of the Story*", hosted by Mr. Dervan Malcolm. Like the previous year, the show which was carried live on the radio, was also streamed live on the Internet. Excerpts of not only the featured presentations but also the Chairman's opening remarks, Minister Stern's comments and the Executive Director's closing remarks were carried live.

As part of the promotion of the event, on September 3, 2010 the Executive Director participated in an interview on the radio talk show *Independent Talk*, hosted by Ralston Hyman and Ronald Thwaites.

Attendees pose questions to the speakers

Effecting cooperation to resolve cross-border anti-competitive conduct affecting CARICOM

BY DR. DELROY BECKFORD

At the Sixth Conference of the United Nations to Review All Aspects of the Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices held on November 6-12, 2010, in Geneva, Switzerland, representatives of various countries recounted their experience in giving effect to Section F.4 of the UN Set Principles on cooperation for resolving disputes involving cross-border anti-competitive conduct.

Globalization it is noted has brought into sharp relief the importance of cooperation in resolving cross-border competition disputes given the absence of a multilateral agreement on the applicable competition law and policy in the event of such disputes. Trade agreements with competition provisions often provide for cooperation between competition authorities but there is often no binding obligation in this respect, and where best efforts are encouraged confidential information is often excluded in the recommended information sharing exercise.

In this regard, Section F.4 of the 1980 UN Principles provides a useful framework for achieving the objectives of enforcement in relation to anti-competitive conduct with cross-border effects. Section F.4 of the UN Set on Competition provides as follows:

***"…4. Consultations**:*

(a) *Where a State, particularly of a developing country, believes that a consultation with another State or States is appropriate in regard to **an issue concerning control of restrictive business practices**, it may request a **consultation** with those States with a view to **finding a mutually acceptable solution.** When a consultation is to be held, the States involved may request the Secretary-General of UNCTAD to provide mutually agreed conference facilities for such a consultation;*

(b) *States should accord **full consideration** to requests for consultations and, upon agreement as to the **subject** of and the **procedures** for such a consultation, the consultation should take place at an appropriate time;*

(c) *If the States involved so agree, a **joint report** on the consultations and their results should be prepared by the States involved and, if they so wish, with the **assistance of the UNCTAD secretariat**, and be made available to the Secretary-General of UNCTAD for inclusion in the annual report on restrictive business practices."*

These UN Set Principles contemplate voluntary cooperation among competition authorities. In the case of CARICOM Member States, there is no specific provision in domestic competition legislation permitting or excluding voluntary cooperation between competition authorities not governed by or subject to the Revised Treaty of Chaguaramas (RTC) or any trade agreement between CARICOM and other countries. Domestic legislation, to the extent it provides for cooperation, does so in the context of a national competition authority and the Community Commission regarding enforcement of decisions of the Community Commission.

However, Chapter VIII of the RTC provides for cooperation among the CARICOM Member States beyond enforcement of the decisions of the Community Commission. First, there is an obligation for national competition authorities to cooperate with the Community Commission to achieve compliance with the rules of competition. Member states must also investigate alleged anti-competitive business conduct referred to them by the Community Commission. Further elaboration of this obligation is contained in Article 176(1) of the RTC whereby national competition agencies are enjoined to conduct a preliminary examination of conduct of a business enterprise within the Caricom Single Market and Economy (CSME) on the request of the Commission where the Commission is of the view that business conduct within the CSME prejudices trade, and prevent, restricts or distorts competition within the CSME.

This obligation under the RTC will often require amendment to domestic law for effect to be given to it. In some jurisdictions, for example, Jamaica, there is no provision in the competition legislation for investigations to be conducted at the request of an external body. In the case of Jamaica, section 5 of the Fair Competition Act requires the Fair Trading Commission to conduct investigations at the request of the relevant Minister, and it is arguable that a request by the Commission for a preliminary examination of business conduct could be done through this medium.

There is also specific provision for cooperation among competition authorities. Competition authorities are enjoined to investigate allegations of anti-competitive business conduct referred to them by another competition authority. In addition, cooperation is envisaged among competition authorities in the detection and prevention of anti-competitive business conduct and for the exchange of information relating to such conduct.

There is no limitation on the nature of the information that may be shared, but each Member State can determine whether to share confidential information. The RTC, therefore, does not require that confidential information be shared but gives each Member State the discretion to share such information if the Member State determines that the sharing of such information is not prejudicial to the public interest or to the commercial interests of enterprises. These obligations mean that the UN Set principles may be irrelevant for CARICOM regarding cooperation of competition authorities in CARICOM.

It is noteworthy, however, that despite these obligations at the regional level, amendment to domestic legislation in the Member States is required to give them effect because of the dualist system of law according to which international obligations must be specifically enacted at the domestic level.

While some attempt has been made to enact domestic legislation to give effect to these obligations, this is often inadequate for mandatory cooperation to be given effect. This results from the fact that some provisions of the RTC are drafted in mandatory terms that would take effect on the promulgation of the relevant law to give effect to the RTC and other provisions, although drafted in mandatory terms, requires a further legislative act other than the one to give effect to the Revised Treaty. For example, section 3 of the Caribbean Community Act, 2004 of Antigua and Barbuda provides that '*Subject to this Act, the Treaty, the text of which is set out in the Schedule, shall have the force of law*'.

In this context consider Article170 (b) of the RTC.

(b) the Member States shall:

i. take the necessary legislative measures to ensure consistency and compliance with the rules of competition and provide penalties for anti-competitive business conduct;

ii. provide for the dissemination of relevant information to facilitate consumer choice;

iii. establish and maintain institutional arrangements and administrative procedures to enforce competition laws; and

iv. take effective measures to ensure access by nationals of other Member States to competent enforcement authorities including the courts on an equitable, transparent and non-discriminatory basis.

Another example is Article 170(2) which provides that:

Every Member State shall establish and maintain a national competition authority for the purpose of facilitating the implementation of the rules of competition.

Yet another example is that provided in Article 177 of the RTC which states:

1. A Member State shall, within its jurisdiction, prohibit as being anti-competitive business conduct, the following:

(a) agreements between enterprises, decisions by associations of enterprises, and concerted practices by enterprises which have as their object or effect the prevention, restriction or distortion of competition within the Community;

(b) actions by which an enterprise abuses its dominant position within the Community; or

(c) any other like conduct by enterprises whose object or effect is to frustrate the benefits expected from the establishment of the CSME.

These provisions are in mandatory terms but require some further action on the part of Member States beyond the promulgation of the provisions of the treaty as an Act of Parliament. Although the language used is mandatory the passage of an Act to give effect to the treaty cannot result in these provisions having direct legal effect in as much as further action is required.

By contrast, some provisions are drafted in mandatory terms that can take effect when the treaty is promulgated in domestic law. For example, the general exemption provision of Article 168 with respect to the scope of Chapter VIII of the RTC excludes negative clearance rulings and collective bargaining arrangements.

Therefore, 'voluntary cooperation' exists in terms of the discretion Member States have sought to exercise independently or, possibly in contravention, of their regional obligations to effect domestic legislation for cooperation among regional competition authorities. Moreover, there are institutional limitations to meeting this objective. Fully functioning competition authorities do not exist in a few of the Member States thereby rendering voluntary cooperation aspirational.

Cooperation, to the extent that it exists, will be largely limited to the CARICOM region or other regional spaces with which CARICOM has signed RTAs and which includes competition provisions providing for cooperation. In the context of the CARIFORUM-EPA, there are provisions for cooperation with competition authorities provided for in Article 128.

Article 128 of the CARIFORM-EPA provides as follows:

1. Each Competition Authority may inform the other Competition Authorities of its willingness to cooperate with respect to enforcement activity. This cooperation shall not prevent the Parties or the Signatory CARIFORUM States from taking autonomous decisions.

2. With a view to facilitating the effective application of their respective competition laws, the Competition Authorities may exchange non -confidential information. All exchange of information shall be subject to the standards of confidentiality applicable in each Party and the Signatory CARIFORUM States.

3. Any Competition Authority may inform the other Competition Authorities of any information it possesses which indicates that anti-competitive business practices falling within the scope of this Chapter are taking place in the other Party's territory. The Competition Authority of each Party shall decide upon the form of the exchange of information in accordance with its best practices. Each Competition Authority may also inform the other Competition Authorities of any enforcement proceeding being carried out by it in the following instances:

i. The activity being investigated takes place wholly or substantially within the jurisdiction of any of the other Competition Authorities;

ii. The remedy likely to be imposed would require the prohibition of conduct in the territory of the other Party or Signatory CARIFORUM States;

Continued on page 9

Market structure & collusion

Cartels in Jamaica

BY WENDY M. DUNCAN

Introduction

THERE IS CURRENTLY MUCH conversation and concern about finding a viable alternative source of energy in Jamaica. At the moment, the debate is centred on coal and liquid natural gas as the two major contenders. In the midst of the dispute, however, the possibility of cartelization looms and has found expression in the utterance of recollections of the worldwide oil cartel, OPEC (Organization of Petroleum Countries), and the fear that reliance on liquid natural gas might lead to a similar result in Jamaica. While the fears of cartelization may be no more than conjecture at this stage, the observations provide the ideal backdrop for a snapshot of cartels – what they are, why they form and how they affect competition.

The Jamaican landscape

The eminent scholar, Professor Robert Whish, describes competition law as '…a struggle or contention for superiority, and in the commercial world this means a striving for the custom and business of people in the market place.' During the last two decades of the twentieth century, many governments throughout the world committed themselves to the free market system and pursued policies of liberalization. The movement toward globalization has been characterized by numerous bilateral and multi-lateral agreements such as the General Agreements on Tarriffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). Groups of trading 'blocs' such as the European Community (EC), the Organization of Economic Community Development (OECD) and the Caricom Single Market and Economy (CSME) have formed and will define how international trade is carried out in the future.

In the 1980's Jamaica moved from being an economy which was highly regulated by the Government, to de-regulation, privatization and de-monopolization. The process of de-regulation began with a focus on three main areas: the removal of import licensing regulations which required licenses and quotas for virtually all imports; the removal of controls on prices of items previously subject to price control; and the elimination of a multitude of regulations governing income tax allowances and tax rates.

The second phase in the process involved: the removal of a statutory savings interest rate which allowed banks to pay lower interest rates to savers and reduce interest rate on loans; the removal of retail price controls on a number of petroleum products; and the abandonment of an auction system to determine the rate of exchange and substitute of an inter-bank rate for the same purpose.

Jamaica embraced the liberalization movement and de-regulation allowed enterprises to compete with each other in open markets. This new competitive environment, shaped by market forces, was expected to result in economic efficiency, sustained economic growth and enhanced consumer welfare. In order to achieve these goals, legislation was implemented to 'regulate' the new competitive environment.

In March 1993 the Fair Competition Act was passed to prevent anti-competitive conduct. Its objectives were stated in the long title:

> *An Act to Provide for the maintenance and encouragement of competition in the conduct of trade, business and the supply of services in Jamaica with a view to providing consumers with competitive prices and product choices.*

The most recent phase of the de-regulation process began with the liberalization of the telecommunications sector when Jamaica signed to the World Trade Organization Agreement on Basic Telecommunications Services on February 15, 1997. This led Jamaica to liberalize the telecommunications sector on a phased basis beginning in March 2000.

One of the major pillars upon which competition law rests is the need to prevent firms from entering into agreements which have the effect of restricting competition; and the need to ensure that workable competition is maintained in oligopolistic industries. Horizontal agreements (that is, agreements between enterprises at the same level of the market e.g. competitors) is one leg of the tripod of elements upon which competition law in Jamaica is based; and cartels are prohibited under the Fair Competition Act.

Definition of cartels

In economic terms, cartels have been generally defined as '…a group of sellers of a product who have joined together to control its production, sale and price in the hope of obtaining the advantages of monopoly.' A monopoly can be defined as an industry in which there is only one supplier of a product for which there are no close substitutes and in which it is difficult or impossible for another supplier to co-exist. By joining together and acting as one entity, the suppliers aim to increase prices, share geographic or product markets, set production quotas and 'rig' bids.

Cartels are difficult to organize and maintain. For instance, if the agreement is to reduce output, the members will have to agree on the amount by which each member will reduce its output in order to push up the price. In order for the cartel to thrive, each member must agree to produce no more than it has been assigned to produce by the group. Ironically, once the cartel activity causes an increase in price and profitability, there is a very high incentive for members to cheat and, for instance, offer secret discounts in order to lure some of the profitable business away from the other members. Such cheating leads to the demise of the cartel as, once members begin to suspect each other, each one is tempted to cut prices first and beat the other members in getting the profit. Two formidable hurdles to successful cartel coordination are that members must decide on what to produce, or members will use product quality differences to divert sales away from other cartel members. As a result of this, cartels are usually supported by elaborate 'policing' arrangements where members spy on each other to ensure that no one sells more than the 'agreed' limit or drops prices below that set by the cartel. Members must then devise credible strategies for punishing deviations.

The most well-known example of a cartel is OPEC. This cartel emerged in the 1970's and, for a while, was 'one of the most spectacularly successful cartels in history.' By restricting output, the member nations were able to quadruple the price of oil between 1973 and 1974. The cartel survived through two worldwide recessions and certain political events. There were huge price increases again between 1979 and 1980, and then oil prices fell in the mid-1980's. The OPEC cartel, however, still dominates the world oil market.

The harmful effects of cartels on competition

Cartels cause significant economic harm as they ultimately aim to prevent, restrict or distort competition. Because they are insulated from competitive pressures, the members do not need to be innovative or efficient and this results in waste. Cartels therefore rob consumers and the economy of the benefits of competition as their activities lead to higher prices, poorer quality goods and services and fewer or no choices for the consumer. As a result, the consumer may opt not to purchase the cartelized product at the higher price, or purchase less of it. Consumers, however, pay more for the quantity which they do purchase, thereby unknowingly transferring wealth to the cartel members.

Conclusion

While the debate continues concerning the best alternative source of energy in Jamaica, regardless of the outcome, it is clear that cartels augur ill for the economy and, ultimately, for consumers.‡

Wendy Duncan is a Legal Officer at the Fair Trading Commission

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Effecting cooperation to resolve cross-border anti-competitive conduct affecting CARICOM

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iii. *The activity being investigated involves conduct believed to have been required, encouraged or approved.*

Here, there is possibly greater scope for utilizing the UN principles and procedures because of the permissive language for cooperation, suggesting that voluntary cooperation is envisaged. To the extent that few CARICOM Member States have fully functioning competition authorities, much of the monitoring and reviewing of anti-competitive practices in other jurisdictions with which CARICOM has signed RTAs may well have to be assumed by the Community Commission to make the provisions on cooperation effective.

In the short term, the CARICOM region may well be at a disadvantage in relation to its trading partners if it does not have effective competition authorities that can monitor anti-competitive practices in other countries thereby facilitating the effective operation of cooperation provisions.

Trading partners with developed competition authorities would seem better able to utilize cooperation provisions to remedy conduct that affect their industries than those without, thereby putting CARICOM industries at a competitive disadvantage in tackling extra-regional anti-competitive practices that limit market access or generate undue rents, as in the case of export cartels.

The Community Commission would perforce require information from Member States regarding the anti-competitive effects of extra-regional business conduct in those Member States subject to such conduct and national competition authorities would perhaps be better equipped to gather this information from the domestic industries affected.

Notwithstanding the issues with domestic enforcement, the RTC may be seen as an attempt at giving a modicum of expression to the UN principles in so far as there is provision for mandatory enforcement.‡

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Endnote

[1]Another example may be noted, that is, section 3 of the Barbados Caribbean Community Act, 2003. Section 3 provides that: '*Subject to this Act, the Treaty shall have the force of law in Barbados*'.

Effect of the structure of the banking sector on manufacturers

JAMAICA'S MANUFACTURERS have been resilient, despite having to operate in a challenging business environment. In 2009, the manufacturing sector employed 77,700 persons, contributed 8.3% to GDP, and earned US$722.9 million in exports. However, there is great potential for growth with a more business-friendly climate. The banking structure in Jamaica is one factor that has impeded the competitiveness of manufacturers. To return to the glory days when manufacturing contributed approximately 20% to GDP, we must explore ways to stimulate production, and an examination of the banking structure is a good start.

The flow of credit is the lifeblood of manufacturers, and a strong manufacturing base is needed for economic sustainability and prosperity. Financing is essential to encourage new investment and retooling. This results in socio-economic benefits, as financing helps to fuel expansion in manufacturing, which translates into job creation and increased revenue for the country, to improve healthcare, education and infrastructure.

A major problem which has impacted the competitiveness of local manufacturers, is the lack of affordable and accessible financing, as well as unfair banking practises. There are two categories of issues that will be addressed, those at the institutional level and those at the regulatory level.

To promote start-up and growth in the productive sector, banks have provided special financing to the tune of single digits. Despite this, base lending rates remain in double digits, which is far too high. In a contracting economy, manufacturers and consumers alike are experiencing difficulties servicing loans and accessing credit due to high interest rates. Special financing for manufacturers is a short-term fix that needs to be prolonged for there to be economic growth.

In the same vein, when the Bank of Jamaica (BOJ) adjusts interest rates, decline in interest rates are not applied by commercial banks at the same pace as they are increased. The banks need to implement measures for a faster pace of reduction, so that they can improve the production indicators of the manufacturing industry and promote entrepreneurship in Jamaica.

In addition, collateral requirements make accessing loans difficult, particularly for small and medium sized enterprises (SMEs), which comprise the majority of the manufacturing sector. Banks are risk averse and as a result, collateral requirements tend to be twice or more of what is being borrowed. What actually happens is that banks take liquidity risks, by swapping a liquid asset like cash for an illiquid asset such as land. Banks in Jamaica use collateral with the knowledge that the customer has few alternatives.

The lack of human resources to appropriately evaluate risks of SMEs also contributes to the bank's collateral stance. The bank's resources are channelled to the few large companies, because these large companies have alternatives, as they can borrow outside of Jamaica. This competition results in favourable terms to the large borrower.

In addition, credit decisions are often made at a centralized location by a representative that has never visited the company's facility and more often than not, doesn't fully understand their business model or their industry. However, this culture needs to be changed. Banks need to reassess their role in development, and retrofit their structures to facilitate business loans in the SME sector. Banks need to return to the days when they used to send representatives out in the field to understand the companies that they serve. In essence, they need to return to 'traditional' banking which would put them in a better position to evaluate risks and lend funds based on the associated risks.

There are models in developed markets, where commercial banks have specialized lending arms with well-trained staff to

that do not conform to the status quo. Other options are improving the capacity of the Consumer Affairs Commission and we will also welcome the publishing of bank charges.

To address the problem of collateral, the JMA has lobbied for the implementation of the Mutual Guarantee Scheme, where the Government would reduce the risk to lenders by guaranteeing portions of loans. In response, the Government has announced a Credit Enhancement Facility. The process has already started to establish a Credit Bureau, which is an independent agency that compiles data on the borrowing and payment habits of consumers. When this Bureau becomes operational, it would also help to mitigate risks, as the applicants' credit history and performance would improve the quality of the lending decision.

effectively evaluate lending opportunities. To manage their downside risk, they have 'workout groups' that are designed to assist companies that are having trouble servicing their loans. These groups are proactive in restructuring loans to ensure that their principal and interest are secure. If local commercial banks don't try to emulate these best practices, they will continue to perpetuate the cycle of not efficiently evaluating risk and will compensate for loan defaults by establishing more hurdles for borrowers.

Consideration should also be given to setting up a department dedicated to reviewing business plans with customers, with recommendations being made for improvement, so that customers have a better chance of accessing loans.

In addition to cost and access to financing, bank charges and fees are also prohibitive. For example, banks are charging customers to make deposits, as well as to do in-bank and ATM transactions, which is an added cost for manufacturers. The bank's fee structure should guide consumers towards efficiency, not make up for losses and unsustainable ways of making a profit.

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On a regulatory level, the Bank of Jamaica needs to examine its framework to see if it is preventing commercial banks from being more business-friendly. The need for regulation must be examined in the context of ensuring that the commercial banking sector is able to facilitate growth in the Jamaican economy.

The Government must also seek to protect consumers against unfair practises by banks. The implementation of the Offices of a Financial Ombudsman would serve to regulate banking practices, with punitive actions taken against those

The absence of the skills set locally to analyse and predict the future of the economy, increase the risks associated with lending. Predictability helps to determine risks, and so the banks should consider investing in resources that can predict what will happen in the economy, and the Government should work towards creating a socio-economic environment more conducive to lending. Improving productivity and reducing the trade imbalance are critical first steps.

Inherently, placing money on Government instruments has been more attractive to banks than lending to the private sector. Banking regulations therefore incentivise banks to investing a large portion of its portfolio in central government, because there are less risks and higher returns involved. However, in a thrust to reduce interest rates, the Government restructured its domestic debt in the first quarter of 2010. The Jamaica Debt Exchange (JDX) is a positive first step to allowing manufacturers to gain access to lower interest rates. To push interest rates down even further, Government must encourage greater competition in the lending market through Government policy. One option is providing interest subsidies to banks.

It is clear that the banking structure needs to be revamped both on the institutional level and the regulatory level, to encourage investment, increase the competitiveness of local manufacturers and boost the Jamaican economy. There is no better time than now.

Article contributed by the Jamaica Manufacturers' Association

The performance of the banking sector in the pre-FINSAC vs. post-FINSAC period

OVER THE PAST TWO DECADES, the Jamaican banking sector has undergone significant structural changes. These changes were occasioned by deregulation of the financial sector arising from the liberalization of the Jamaican economy; a new Banking Act in 1992 with significant amendments in 2002 and 2004; rapid expansion followed by significant contraction in the number of banks; a financial sector crisis and a sector now largely owned and managed by foreign interests.

Assessing the performance of the banking sector is a complex process which involves analysing the interaction between the various banks' internal operations and the external environment. A key aspect of assessing the impact of the external environment is by looking at the influence of market structure on bank performance. The relationship between market structure and bank performance can be explained by assessing the implications of industry concentration for operational efficiency in the sector.

Pre-FINSAC period

According to an Inter-American Development Bank (IADB) Data Base Report, Jamaica's financial sector grew substantially in the 1980's, indicating that between 1986 and 1990, Jamaica's financial sector rose 19 percent in real terms, from US$248 million to US$295 million. In nominal terms, the number of commercial banks, building societies, and financial institutions grew from 36 to 57 between 1980 and 1997, and total assets increased from J$2.5 billion to J$192.6 billion (US$1.400 billion to US$5.205 billion).

The highest growth within the sector was largely evidenced in the number of merchant banks, brought on by what is known as 'regulatory arbitrage'. The low barriers to entry under the law applicable to such institutions (Protection of Depositors Act) allowed for minimal capitalization and provided for few restrictions on the scope of operations in terms of loans and investments. Further, merchant banks required lower liquidity ratios. Between the first quarter of 1980 and the corresponding period of 1998, the assets of commercial banks rose from J$1.920 billion to J$157.235 billion, while deposits grew from J$1.338 billion to J$109.437 billion. In 1980 there were only a few merchant banks - and those were largely inactive – but by June 1997 the number stood at 27: their assets rose from J$129.700 million to J$ 17.934 billion over the same period.

During this period of rapid expansion of the sector, there were two distinct models of bank practices in operation. The foreign owned banks were managed largely along the lines of their North American parents whereby they stick to core banking business - taking deposits from the public and on-lend the funds to the private sector at a spread. On the other hand, the locally owned banks operated along the "Japanese model" whereby the bank takes on an active role in owning and operating non-banking (non-core) businesses. Some of the areas ventured into were tourism and agriculture. In addition, these banks also created financial conglomerates with operations in insurance, securities, building societies, merchant banking and investment banking. These practices had the full endorsement of the Government of the day as they were seen as nation building.

The liberalization of the Jamaican economy including the foreign exchange market in the early 1990s led to a significant increase in money supply and inflation as the local currency experienced significant depreciation against its major trading currency the US dollar. In the three year period between 1989 and 1992, the Jamaican dollar declined from $5.75:US$1 to $23.01:US$1, a depreciation of over 300%. Inflation also peaked during this period at 80.2% in 1991 and remained in double digit range each year until 1997. The banks were very profitable during this period as assets values were increasing in pace with interest rates.

In a response, the monetary authorities tried to stem inflation by reducing aggregate demand. The central bank adopted an aggressive monetary policy stance evidenced by very high liquidity reserves ratios and highly elevated policy interest rates with yields on government paper climbing as high as 56%. This led to bank's lending rates increasing to a range between 75-120%. As the high inflation was being tamed, interest rates remained relatively high thereby causing significant increases in real interest rates. The reduction in inflation also caused the asset bubble to burst as real estate prices began to reverse. At these high rates borrowers who had taken out loans before the increased rates now were unable to service their loans. As a result, the number of bad loans on the books of banks began to increase rapidly. This was further compounded with collateral values falling below outstanding loan balances. The locally owned and controlled banks whose business model included diversifying from core banking practices (the Japanese model) became very exposed under the high interest rate environment as rising bad debts and significant mismatching of balance sheet assets and liabilities eroded their capital base. This brought about a liquidity crunch for these banks that cascaded into insolvency.

The effect on borrowers was devastating in some instances with some persons losing their businesses and homes from foreclosures. Depositors fared much better with the Government guaranteeing these deposits by taking over ownership of the failed banks and creating the Financial Sector Adjustment Company (FINSAC) to dispose the bad loans.

Post-FINSAC period

The present-day Jamaican banking sector is largely the legacy of the unprecedented financial crisis which preceded the government intervention through the establishment of FINSAC Ltd and as a result has undergone many changes consequentially. The crisis of the mid-1990's resulted in a transformation of the sector in terms of number, types, and ownership of banks. Regulatory amendments imposed by the Bank of Jamaica, and reporting changes imposed by an amended Companies Act and Jamaica's adoption of International Financial Reporting Standards (IFRS) has also significantly impacted on the banking sector's performance.

A positive outcome from the banking sector crisis has been the creation a Deposit Insurance Scheme which will help to prevent tax payers' funds being used to bail out depositors and shareholders of failed banks in the future. The rationale for this Deposit Insurance Scheme was to provide protection to small unsophisticated savers as well as maintaining stability of financial sector as a whole through ensuring confidence in deposit-taking institutions. The introduction of deposit insurance scheme manifested itself within the Jamaican economy through the Jamaica Deposit Insurance Corporation which was born out of the financial crisis of the mid-1990's. The Scheme was established by an Act of Parliament (the Deposit Insurance Act, 1998), and commenced operations on August 31st of the same year. The Deposit Insurance Scheme covers only those institutions regulated and supervised by the Bank of Jamaica with each depositor, per ownership category in each institution covered up to $600,000, a limit which covers over 90% of depositors in insured institutions

Jamaica's banking landscape has evolved remarkably over the last decade. As discussed before, the early 1990s followed a period of deregulation in the financial sector, which brought about a proliferation of banks in the island - 37 by 1993 of which 30 were locally owned. The post-FINSAC period has seen the number of banks fall to the present level of 10 (7 commercial banks and 3 merchant banks). In addition to this the ownership structure of the sector has also changed substantially since the pre-FINSAC era, with the banking sector now being 97% foreign-controlled. The business model of banks is of a conservative posture with a focus core banking practices. With a smaller number of players in the sector and the dominance by two large banks, there may be less competition but a far stronger and more profitable industry. Total assets across the banking sector currently stands at $631 billion with deposits of $390 billion and capital of $84 billion. As a result, the sector has been able to withstand the fallout of banking crisis that afflicted the US and European banking system over the past two years. Its resilience was further demonstrated over the past six months with the Government recently announcing that the contingency funding that was put in place for the sector post Jamaica Debt Exchange was no longer necessary.

Today, we boast a strong financial sector which contributes significantly to our national development.

Article contributed by the Jamaica Bankers Association

Structural changes in private health insurance market

REGARDLESS OF THE COUNTRY AND THE INDUSTRY, the structure of any market changes as time goes by. There are many reasons why market structure changes and these include but are not limited to innovation, globalization, as well as acquisition and mergers in order to maximize efficiency gains and enhance market stability. The Jamaican financial market is not immune to such forces that initiate market changes and as a result it has undergone and will continue to evolve and mature.

The most significant structural change to the Jamaican financial market came as result of the financial meltdown that occurred in the early 1990's. Many financial institutions across various sectors became insolvent exposing many depositors and policyholders to the risk of losing their investments. Consequently, the government intervened through the Financial Sector Adjustment Company Limited (FINSAC). FINSAC served as the vehicle through which the realignment and restructuring of the financial sector was managed in order to:

- curtail the adverse effects on the local economy;
- protect the investments of policyholders, depositors and pensioners;
- rehabilitate the sector by resolving problems of solvency and liquidity; and
- create a more stable and vibrant financial sector through a range of activities.

Before FINSAC, the life insurance industry, along with its sub-component-private health insurance market, has seen its fair amount of changes. In 1995, while the life insurance industry consisted of thirteen insurance companies, only four companies sold health insurance. In addition to these four companies, Blue Cross of Jamaica Limited[1] also sold health insurance. Consequently, there were five active companies (which were all local) competing in the private health insurance industry. Along with Blue Cross, the other companies were First Life, Island Life, Life of Jamaica and the Jamaica Mutual Life Assurance Society (more commonly known as Mutual Life).

By 2002, following the rehabilitation of the life insurance sector by FINSAC, there was a significant consolidation of the players in the life insurance indus-

Table 1: Mergers and Acquisitions of the Life insurance Industry, 1999-2008

Year commission	Entities concerned	New/surviving entity
	Crown Eagle Life Insurance Company Limited	Guardian Life Limited
	Dyoll Life Limited	
	Horizon Life Limited	
	Jamaica Mutual Life Assurance Society	
1999	First Life Insurance Company Limited	First Life Insurance Company Limited
	Crown Eagle Life Insurance Company Limited	
	Dyoll Life Limited	
	Horizon Life Limited	
2001	Barbados Mutual Life	Life of Jamaica Limited
	Life of Barbados	
	Colina	
	Life of Jamaica Limited	
2003	Life of Jamaica Limited	Life of Jamaica Limited
	Island Life Insurance Company	
2004	Life of Jamaica Limited	Life of Jamaica Limited
	First Life Insurance Company Limited	
2005	Guardian Life Limited	Guardian Life Limited
	Prime Life Assurance Company Limited	
2008	Life of Jamaica Limited	Sagicor Life Jamaica Limited[2]
	Blue Cross of Jamaica	

Table 2: Selected Features of the Private Health Insurance Market[4]					
SELECTED FEATURES	**1995**	**2000**	**2002**	**2005**	**2009**
Number of Life Insurance Companies	13	14	8	6	5
Number of Life Insurance Companies offering Health Insurance	4	4	4	3	2
Number of Lives Insured	88,745	154,767	163, 951	908,936	n/a
Premium for health insurance ($M)	767.4	1,486.2	2,717.7	4,852.7	7,719.3
Claims ($'M)	n/a	1,376.3	1,773.5	3,304.9	6,275.9
Utilization Rate (Claims as Percentage of Premium)	n/a	92.6	93.7	68.1	81.3

Source: Computed from data obtained from the Insurance Association and the Financial Services Commission; n/a: not available

try which resulted in mergers leading to a reduction in the number of life insurance companies from thirteen to eight. FINSAC, rather than market forces, guided the consolidation process. Of the eight surviving companies, only four offered private health insurance products. Subsequent to the FINSAC intervention, mergers also resulted from acquisitions where the insurance business of one life insurance firm was transferred to another life insurance company under a scheme approved by the Financial Services Commission (FSC).

Table 1 highlights the mergers that have occurred in the industry between 1999 and 2008. Since 2003, the mergers were driven by market forces and competition. The transfers of insurance portfolios from one firm to another are also shown in Table 1 as mergers. By the end of 2008, there were only 5 life insurance companies with only 2 competing in the private health insurance industry.

Despite the contraction in the number of companies offering health insurance, the private health insurance industry continues to grow and develop. Its growth and development can be seen on many perspectives such as customer service, number of policyholders, and size of the business. For example, in an attempt to offer improved customer service, health insurance providers have integrated technology into their services. As a result, customers and health care providers can access their benefits electronically and are able to view details of their usage and benefits of their plans via the internet. The number of persons with health insurance has seen tremendous growth, increasing from 88,785 in 1995 to 908,936 individuals in 2008.[3] Similarly health insurance premiums have moved from $767 million in 1995 to $7.7 billion in 2009. Taking into account inflation, this represents approximately 72 percent real growth. Table 2 below displays selected key features of the private health insurance market from 1995 to 2009.

As seen in Table 2, claims consume a significant portion of health premiums. The margins in the health insurance business are very thin. In addition to incurring and settling claims expenses, the insurance companies also have to control their administrative expenses. If the claims ratio, that is claims expense as a percentage of premiums, is high (above 70%) then companies could find it uneconomical to stay in business. This is one of the factors why only a few life insurance companies compete in the health insurance market. Furthermore pricing of the product is challenging as the computation of the morbidity rate (the utilization rate of sick benefits) is extremely difficult and tends to be less than perfectly accurate despite improved mathematical techniques. Moreover, the high rate of medical inflation adds to the difficulties in pricing. The ratios shown in Table 2 are generally high and it therefore means that the margin for profitability is low.

While the life and health insurance market has undergone significant structural changes, the sector is stronger due to the enhanced regulatory and supervisory framework which has produced enhanced market conduct, corporate governance and prudential and standards. Consequently, insurance industry is more financially sound and there is a greater protection for investments of policyholders and pensioners.

Article contributed by the Financial Services Commission

Endnotes

[1]It was under the new Insurance Act (2001) that Blue Cross of Jamaica Limited was registered as a life insurance company.

[2]Life of Jamaica Limited changed its name to Sagicor Life Jamaica Limited on June 2, 2008.

[3]The number of persons with private health insurance at the end of 2009 is currently not available.

[4]It should be noted for the years 1995, 2000 and 2002 that Blue Cross of Jamaica was registered as a general insurance company even though it specialised in health insurance. Data from Blue Cross were not available and were not included in Table 2 for the years 1995, 2000 and 2002.

Building consumer welfare on a solid foundation

The benefits of competition in the cement industry

BY KEVIN HARRIOTT

THE CONSTRUCTION AND INSTALLATION SECTOR is a significant contributor to Jamaica's economy. The sector contributed $47,429 million (11 percent) to Jamaica's real Gross Domestic Product (GDP) in 2007 (Planning Institute of Jamaica 2008, 5.1). The cement industry is a crucial component of the sector.

The primary objective of this paper is to quantify the economic benefits of competition in this important industry. A secondary objective is to identify which groups of market participants, if any, stand to benefit when importation of cement is impeded. To measure the benefits, we make use of the economic concepts of total surplus, consumer surplus and producer surplus. Consumer Surplus measures the extent to which consumers benefit from the industry by quantifying the extent by which consumers' valuation of cement exceeds its price. Producer Surplus measures the extent to which suppliers benefit from the industry by quantifying the extent by which sales revenue exceeds the economic costs incurred to make the product available to consumers. Total surplus, the sum of consumer and producer surpluses, measures the society's benefits by quantifying the extent by which consumers' valuation of cement exceeds the economic costs incurred in making the product available to consumers.

In recent years, much has been said about the prospects for the industry to continue delivering these benefits. Of special importance is the likely effect of imported cement on the industry. Discussions have been largely confined, however, to mere rhetoric and it is clear that documented evidence supporting contending views needs now to be infused in the public discourse. This paper offers such evidence.

In addition to measuring the benefits generated by market, we measure the benefits to distinct groups within the market: producers (comprising all suppliers of cement) and consumers. To measure the economic benefit to the market, we estimate the value consumers place on cement and the benefits accruing to suppliers. A reasonable measure of consumers' valuation can be deduced from the industry's demand function and measures of suppliers' benefits can be inferred by the suppliers' (marginal) cost function.

Data description

Based on the discussion in the previous section, we need to identify empirically, the characteristics of the demand and supply of cement. To do this we use monthly data covering the period January 2001 through December 2008. Data on price, sales volume, operating expenses, consumer price index and foreign exchange rates are used in the estimation process.

During the period, the price of a regular bag (42.5 kg) of Ordinary Portland Cement (OPC) averaged $522. Cement was sold at its lowest price of $433 in June 2005 having reached its highest price of $629 in May 2003. On average, the equivalent of 1.4 million regular bags of cement (60,836.4 tons) was supplied to the market monthly. Cement sales peaked in June 2006 when approximately 2 million bags (86,365.0 tons) were sold in contrast to December 2001 when only 0.9 million bags (38,585.06 tons) were sold. There was a sustained increase in the quantity of cement sold during October 2004 through February 2006. This period of sustained increase in supply corresponds to a downward trend in cement prices over the period.

The characteristics of the demand

Market demand refers to the relationship between the quantity of the product that consumers are willing and able to consume and the price of the product, all other things held constant. The market's demand for cement is characterized as:

$$\textit{Demand (in bags)} = 8{,}327{,}888 - 13{,}192\textit{price}$$

The demand function serves an important role as it provides a straightforward aggregate measure of the extent to which consumers benefit from participating in the market. Intuitively, the demand curve shows the maximum price that consumers are willing and able to pay for a specified volume of cement. This maximum price, therefore, can be interpreted as a measure of the value consumer place on acquiring the product. The value-added to the consumer by purchasing the product is therefore calculated as the difference between the maximum price and the actual price paid. This value-added is referred to as the consumer surplus. If cement was being sold for $550, then the demand curve indicates that approximately 45,573 tons would be sold.

In addition to providing a measure of consumer benefits, the demand function conveys information about the sensitivity of demand to changes in the price. Specifically, if the price was reduced from $550 to $450, demand would increase to 101,639 tons. The lower price stimulates an additional 56,606 tons from individuals who were either unwilling or unable to pay the higher price but would now be willing and able to pay the lower price.

The characteristics of supply

In its broadest definition, a production technology refers to a specific method of combining productive resources ('inputs') in supplying a given good or service. There are two main methods of supplying cement: (i) domestic manufacturing ('production') and (ii) importation. The key inputs utilized in the manufacturing technology to supply cement in Jamaica are labourers; raw material such as clinker; and machinery. In contrast, the key inputs utilized in the importation technology are (i) cement produced outside of Jamaica; (ii) shipping services; and (iii) custom services.

Accordingly, different technologies represent alternative means of achieving the same ends: the supply of a given product. There is nothing inherently desirable about utilizing a given technology; the technology is desirable only to the extent that it makes efficient use of scarce productive resources. Policymakers, therefore, should prefer more efficient technologies to less efficient technologies. If the most efficient technologies are employed in a given industry, there will be more productive resources available to supply goods in other industries.

The importation technology exhibits relatively pronounced 'economies of scale' up to supply levels of 13,764 tons per month and 'diseconomies of scale' thereafter. Specifically, average costs sharply declines as supply increases up to 13,764 tons but sharply increases at higher supply levels. For example, the average cost of importing 15,000 tons monthly is approximately $9,233 per ton. Due to diseconomies of scale, however, the average cost would increase by 22 percent if importation was expanded to 45,000 tons per month. If the price of cement was $522, there would be no commercial incentive for any individual to use importation technology to supply more than 56,709 tons of cement per month as the revenue that would be earned by supplying this amount would be insufficient to recover costs of supplying so much cement.

In contrast, the production technology exhibits relatively moderate economies of scale over the entire range of supply. For example, the average cost of manufacturing 15,000 tons monthly is approximately $11,329 per ton. Due to the relatively flat economies of scale, however, the average cost would decrease cost by only 1 percent if production was expanded to 45,000 per month.

An important distinction, consequently, is that the importation technology is more efficient than the production technology over supply levels ranging between 3,576 and 44,109 tons per month; outside of this range, however, importation technology is less efficient. This distinction, in turn, means that a supplier using production technology would continue to benefit from lower average costs as greater volumes of cement are produced.

The benefits of competition

Economic model of competitive industry

The economic model used is sufficiently flexible to measure changes in the benefits as varying degree of impediments are imposed on importation. Specifically, a more competitive environment is modeled by increasing the permissible volume of

imported cement. In so doing, the least competitive environment coincides with a ban on all imported cement while the most competitive environment is captured by assuming that there are no restrictions on imports. As competition is restricted, there is a systematic increase in price and supply levels of the producer. The model therefore provides one plausible explanation for a trend observed in recent months in which the Caribbean Cement Company Limited has been able to sustain higher sales levels and command higher prices.

The gold standard: unbridled competition

When there are no restrictions to imports, the market-clearing price will be approximately $520 per bag. At this price the producer supplies 52 percent of the quantity demanded, with the remaining 48 percent supplied by importers. It is seen that a total of 746,203 tons is supplied annually and in the process the market generates approximately $2,411 million in economic benefits. Of these benefits, consumers secure approximately $974 million, the producer enjoys $434 million while the remaining $1,003 million goes to importers. We now describe how import restrictions affect market participants.

Impact on importers

Importers are made worse off by restrictions on imported cement. If only 200,000 tons were permitted to be imported annually, the importer's surplus would decline by $401 million compared to its surplus when there are no restrictions; further, the reduction in surplus is more pronounced as greater restrictions are imposed.

Impact on consumers

Consumers are also made worse off by restrictions on imported cement. Specifically, if only 200,000 tons of cement were allowed to be imported, consumer surplus would decline by $275 million. Consumer surplus declines for two reasons. Firstly, less cement is supplied under quota restrictions. Indeed, the table shows that with only 200,000 tons of imported cement permitted, approximately 113,775 fewer tons are supplied. With less cement supplied, fewer consumers would have the opportunity to benefit from its consumption. Secondly, prices are higher under quota restriction. Under this restriction, the price is $17 higher per bag. With higher price, even those consumers who consume the product will be worse off since the higher price reduces their surplus. When imports are banned, consumer surplus declines by as much as $478 million per annum, relative to when there are no restrictions.

Impact on producer

The producer is made better off, in contrast to the other market participants, by restrictions on imported cement. This as producer surplus increases by $220 million as a result of restricting imports to only 200,000 tons annually. It is made better off for the following reason: When the Government restricts imports, less cement is imported relative to a market in which the restrictions are not imposed. This provides the opportunity for increased production to make up for the shortfall. In seeking to maximize its profits, however, the additional cement the producer chooses to supply will be insufficient to offset the reduction in imports as the producer deliberately restricts its supply to command a higher price. This means the policy leads to an overall decline in the total volume supplied to the market. Indeed, such restrictions would lead to a decline of 113,775 tons in the total volume of cement supplied to the market. As mentioned above, the producer earns an additional $17 per bag, relative to when there are no import restrictions. Since the producer is able to secure a higher price and increase its sales, its surplus will be greater relative to that obtained in a competitive environment.

Overall impact on the industry

As discussed above, when the Government restricts imports to only 200,000 tons annually, importer's surplus declines by $401 million, consumers' surplus declines by $275 million, while the producer's surplus increase by $220 million.

Two important effects must be highlighted from these results. Firstly, the policy effectively transfers surplus to the producer by diverting surplus from not only importers. Indeed, it is clear that such policy diverts surplus from consumers as well. This suggests that persons who support import restrictions on the basis that it will safeguard domestic interests are, at best, misguided. Secondly, not all the surplus diverted from consumers and importers are appropriated by the producer; some of the benefits diverted are actually destroyed. In other words, the imposition of import restrictions does not merely redistribute surplus from the importers to the producer; it also dissipates or wastes some of the surplus generated by the competitively organized industry. If imports were limited to 200,000 tons, approximately $456 million in total surplus would be wasted annually. The magnitude of the waste increases as greater restrictions are imposed, i.e. when fewer imports are permitted. If imports are banned outright, the wastage would be approximately $924 million. To put this figure into context, note that it amounts to approximately 2 percent of the GDP generated in 2007 by the construction and installation sector.

Concluding remarks

Jamaican consumers are clearly made worse off from trade restrictions on imported cement even though the domestic producer unambiguously benefits from such restrictions. The policy directive arising from this study is clear; trade restrictions are unlikely to be a win-win proposition for the importing country. Lowering impediments to the importation of cement provides the proper incentives for the domestic producer to offer quality products at the most affordable prices. In addition to benefiting consumers, increased importation would not impose any significant costs to the domestic producer since the producer would not be placed at any significant cost-disadvantage regarding unexploited economies of scale, due to only moderate economies of scale in production. Although the arguments used to establish this position are based on restrictions to the volume of cement imported, they hold true for any other form of artificial restriction to trade such as tariffs and extant antidumping safeguard measures. In fact, it would not be a stretch to say that these results hold beyond the boundaries of the cement industry. The key issue to keep in mind is that importation is merely one avenue through which competition takes place. There is little distinction between competition among domestic suppliers on one hand, and competition among domestic and foreign producers on the other hand. Importation plays a significant role in the cement industry in Jamaica because there is virtually little scope for the entry of a second producer of cement.‡

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Caribbean Cement Company Limited

Meeting the needs of a changing business environment

Introduction

The business and economic environment in Jamaica have negatively impacted the performance of the Caribbean Cement Company Limited (Carib Cement). While Carib Cement remains the industry leader with approximately 85% of the market, the total market for cement has declined significantly since 2007. The local market for cement in 2010 is estimated to be 20% below the demand experienced in 2009.

The Jamaican market also comprises importers which have been consistently bringing in dumped product. In 2010, the imports have come from the United States and the Dominican Republic, the former with duties waived. These products unfairly compete with Carib Cement for market share.

The impact of the imports on the local cement industry has been made worse by the effects of the downturn in global economic activity. For April to June 2010, the Company posted a loss of JMD$217 million. However, Carib Cement has employed and continues to employ new approaches and measures to improve its economic performance.

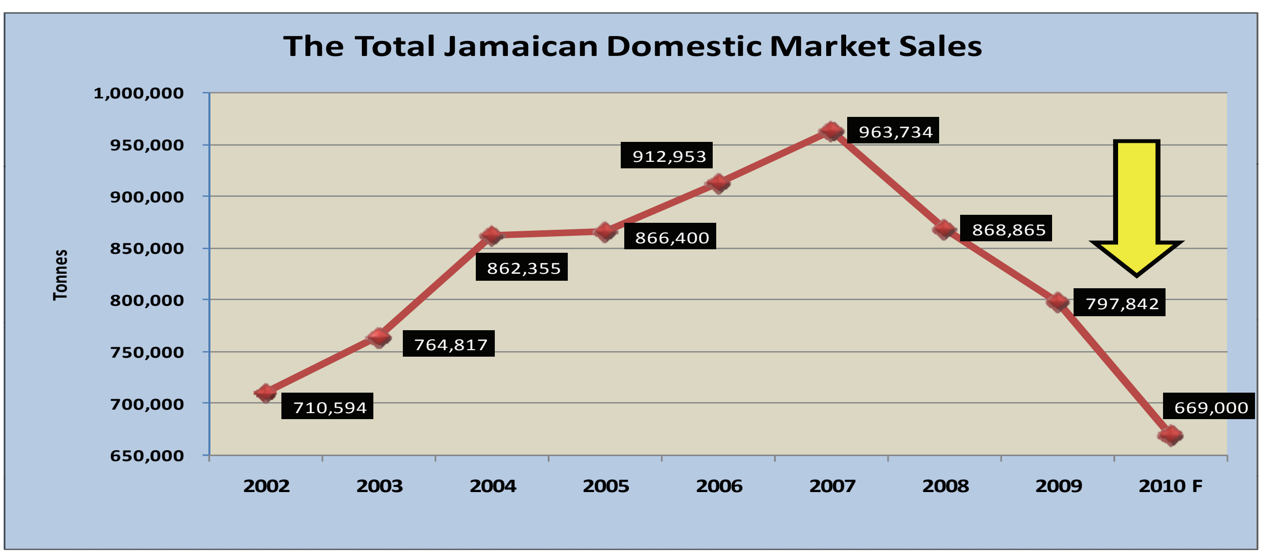
Market structure

The domestic market place has been going through significant changes. The last ten years have been characterized by Carib Cement moving from being the sole supplier to a hyper-competitive environment, where the Company has been vying with global cement manufacturers from as far away as the Far East. Currently there are three (3) other players in the industry offering cement imported from the Dominican Republic and the United States.

Additionally, following the collapse of the global financial systems, the domestic market has been in decline. The demand for cement is stimulated by the following factors - GDP, government-led infrastructural improvements and remittances. The downturn in all of the factors listed has severely impacted the local consumption patterns for cement. Investors and individual households alike have become more risk averse and have delayed building projects. The severity of the conditions is evidenced below as cement demand in 2010 returns to below 2002 levels.

Carib Cement welcomes free and fair competition and is able to operate in any market on this basis. This however has not been the case in Jamaica. As recently as July 2010, the Anti-Dumping and Subsidies Commission (ADSC) ruled that cement imported from the United States was dumped and established a dumping margin of 59.72%. Nonetheless, the Commission found that these imports have not caused, are not causing and are unlikely to cause injury to the local industry. Carib Cement will use legal avenues to appeal these contradictory findings and awaits the results of another claim against dumped cement imported from the Dominican Republic.

The importers use a predatory pricing approach of selling cheap imports just below Carib Cement prices to erode the Company's market share and reduce the total volumes of locally produced cement being delivered to the trade. There have been occasions where the Company has had to suspend production due to high inventory levels of clinker and cement, such as in August 2010.



The total sales are based on estimates of sales of imported cement and Carib Cement sales

The following table outlines the estimated sales of cement in the Jamaican market for 2010. The table also includes Carib Cement's export sales for the first seven months. Carib Cement has exported almost double the estimates of imported cement that has been sold locally. If given the opportunity to produce, Carib Cement can easily satisfy the domestic demand this year and still export to the region.

Estimates of Cement Sales	January - July, 2010
Estimated sales of imported cement	57,500
Carib Cement	337,169
Estimated Total Local Market Size	394,669
Total Carib Cement exports	103,476
Total Carib Cement Sales	440,645

Note: *The table above contains unaudited figures for Carib Cement sales and estimates of the sales of imported cement*

Carib Cement's response to improve its performance

As is the case for any well managed company, Carib Cement has long seen the need to evolve to meet the changing needs of the global environment in which we operate. The Company has transformed itself into a customer focused, efficiency driven organization, manifesting its values in the treatment of its employees, surrounding communities and other publics. The Company's mission is to provide high quality building solutions in an environmentally friendly manner to meet the needs of its customers and the objectives of its various stakeholders. Carib Cement operates from a philosophical perspective that places people at the centre of its processes.

Carib Cement's journey has included the elements of significant capital investment to embrace the latest technologies, focused on human capital development programmes including an innovative Reward and Recognition Programme and the introduction of new work systems, all within an enabling cultural environment. While there have been stumbles along the way, in the last five years we have launched new products, sourced international financing, built new plants, embraced and transferred new technologies, improved efficiencies and environmental performance and strengthened stakeholder relations.

Expansion & Modernization Programme

In 2002, the Company embarked on a plan to enhance its performance. The main components of Carib Cement's US$177 million Expansion & Modernisation Programme were the construction of a new state of the art kiln and mill. This was aimed at increasing the plant's productive capacity and efficiencies and reducing the environmental impact of its operations. The new equipment resulted in:

- the doubling of the plant's clinker capacity to 1.3 million tonnes per annum.
- the doubling of the cement grinding capacity to 1.8 million tonnes per annum.

Management systems

In 2007, Carib Cement achieved ISO 9001:2000 certification. This certification is in recognition of the strong quality control systems that have been implemented. One of the major pillars of this certification is the Company's focus on continuous improvement. It is in this light that the Company is constantly seeking customer feedback to drive improvements in customer service. The Company has also achieved the Bureau of Standards Jamaica Certification Mark which signifies that the Company's management systems meet the requirement for producing high quality, repeatable products.

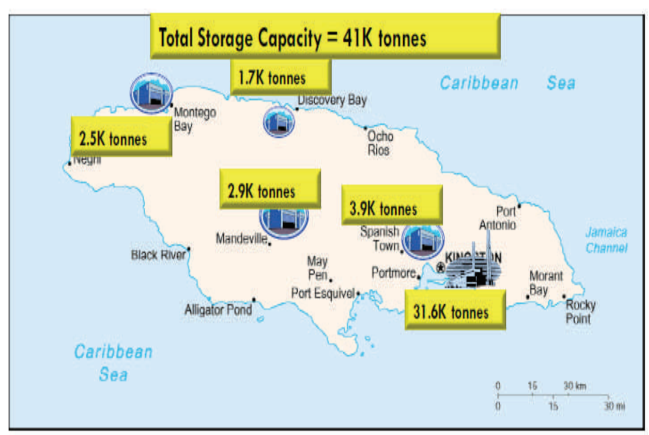
In 2007, Carib Cement also became ISO 14001:2004 certified. This was the formalization of the Company's journey to being a more environmentally friendly operation and minimizing its impact on the environment. The Company has significantly reduced its carbon footprint by the introduction of blended cement as well as through efficiency benefits from its Expansion and Modernisation Programme. Consistent with this, the Company has world class safety management facilities operating at world class incident free levels. The Company also has an established ethics culture and demonstrates this by ensuring that its operations are always in alignment with best practices nationally. In the recent past Carib Cement has received several awards for excellence including:

Best Environmental Performance from USAID
Champion Exporter from the JMA
Best Engineering Project from the JIE
Exemplary Corporate Citizen from the IMAJ

Marketing initiatives

Carib Cement's aim is to continuously deliver products that satisfy specific customer requirements and add value to their businesses. Coupled with this is the pre and post purchase service that has become a part of the customer experience at Carib Cement. The Customer Service team ensures that the quality of the packaging, the delivery time for products and the technical assistance offered, all add to the hassle-free environment the Company is building for its customers.

Across the island, Carib Cement has established distribution points to give customers easier access to our products. Each satellite warehouse is fully equipped to respond to customers' needs in a timely manner, and facilitates face to face contact to deal with any concerns or queries customers may have.



The map depicts the location of the depots and total storage of finished product in Jamaica

In 2009, Carib Cement re-introduced its islandwide promotional campaigns, offering the general public a reduced price for 42.5kg bags of Carib Plus cement for one day at participating stores. The promotional campaigns or "Explosions" helped to build brand awareness and reconnect staff with the general public, while passing on value to the Jamaican consumer. Carib Cement's focus is to start with the customer and work backwards. We view as crucial our ability to respond to their changing needs and consistently exceed their expectations.

Carib Cement continues to provide low cost products using innovative techniques. In an internal survey done earlier this year on retail prices in different countries in the region, Jamaica ranked among the lowest cost cement providers.

Technology & training upgrades

To meet the expectations of a technology driven sector, Carib Cement enhanced its equipment throughout the year with the installation of a new jumbo bag machine to improve efficiency and delivery time. There are plans to install two new pieces of stretch-wrapping packing equipment for the preparation of our export product. This will improve the packaging and give the Company the ability to expand its regional markets, particularly those that require bagged product. The Company infuses technology transfer as a part of the entry and maintenance strategy for all markets, imparting skills to customers and end-users alike across the region. This strategy of sharing and providing technical assistance and innovation has been fundamental in the Company's ability to win and retain new markets within the region.

The new technology has also allowed us to diversify our product offerings in response to the specific needs of our customers. Very recently we introduced a new product, our Carib Block which provides added benefits for the blockmaking market sector.

As part of our continuous improvement, our human resource is provided with the requisite training to enhance skills and competencies to the highest levels. We have in place Performance Measurement Systems and a Reward and Recognition Programme. Our people are competent, committed and engaged and able to respond to changing needs and the environment.

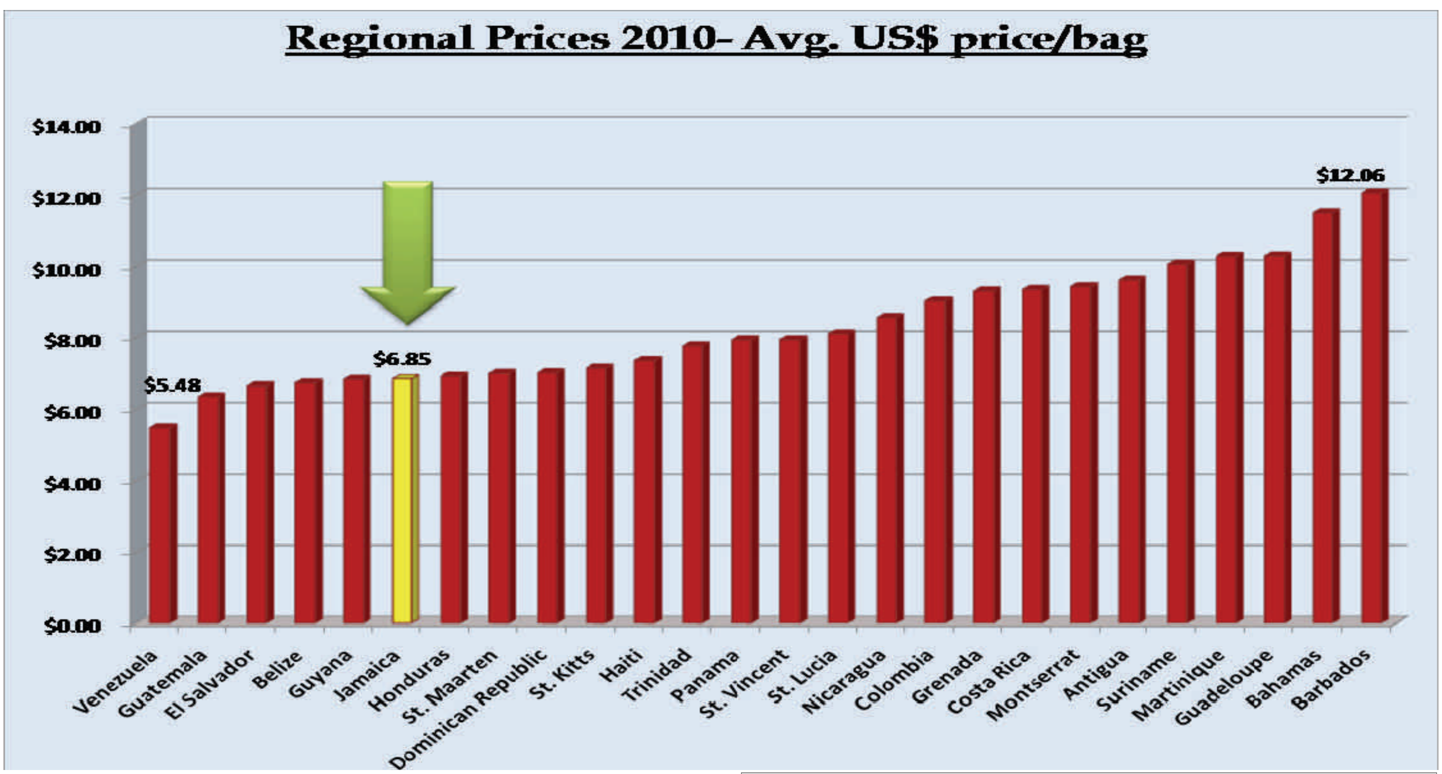
Corporate social responsibility

Carib Cement's tag line is "more than just cement". The Company's policy is to give priority to programmes in its immediate community and contribute to the wider society through the sponsorship of Education and Sport initiatives. The Company views as very important its responsibility to "give back".

Export focus

The challenges we face here, require that our manufacturing systems must be flexible and reliable, our productivity and costs competitive and the delivery of product and service second to none. This management approach has enabled Carib Cement to enter into the export market successfully on the same value system employed locally.

In 2009, 177,166 tonnes of clinker and cement were exported, more than six times the quantity of exports for 2008, earning US$12.8m. A number of new markets have been identified throughout the region these include Haiti, Turks & Caicos, Cayman, Belize, Aruba & Curacao, Guyana and St. Kitts and Nevis. For 2010, the export initiatives have yielded even more promising results. Up to July 2010 export sales for both clinker and cement are approximately 160,000 tonnes. The Company is targeting export volumes of over 250,000 tonnes of cement and clinker in 2010 with a view to increasing this total in 2011. The exploratory work for new markets is ongoing and there are indications that the export deliveries could expand significantly by as early as the first quarter of 2011.



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Feasibility of introducing competition in the distribution of electricity in Jamaica

Electricity is an essential input into the production and provision of almost all goods and services in an economy. The modern household is also completely dependent on the commodity to operate the myriad of electric and electronic devices that have become natural to the execution of daily activities and the enjoyment of basic comfort. It is therefore critical that efficient processes are employed in the generation and distribution of electricity to ensure the economic and social wellbeing of any country.

As part of the drive to increase efficiency in the Jamaican energy generation market, competition was introduced in 2004 giving Independent Power Producers (IPPs) the opportunity to compete with the Jamaica Public Service Company Ltd. (JPS) for new generating capacity. Under this arrangement the JPS retains a monopoly on transmission, distribution and what some have termed retailing. It is argued in some quarters however, that greater efficiency can be realized if competition is also allowed in the distribution of electricity.

What type of electricity market structure exists in Jamaica?

Ioannia N. Kessides, in the book titled: *Reforming Infrastructure, Privatization, Regulation and Competition*, suggests that electricity markets can be structured in four ways reflecting varying levels of competition and customer choice:

1. The ***Monopoly*** structure, where a single entity generates all electricity and delivers it over a transmission network to distribution companies or customers.
2. The ***Single buyer***, where an agency with a monopoly on transmission, buys electricity from competing generators and sells it to distributors and large power users without competition from other suppliers.
3. ***Wholesale competition***, where multiple distributors buy electricity from competing generators, uses the transmission network to deliver it to their service area under open access arrangements, and maintain monopolies on sale in their service areas.
4. ***Retail competition***, where customers have access to competing generators, directly or through a retailer of their choice, and transmission and distribution networks operate under open access arrangements.

Of the four market structures listed above, the *single buyer* category best describes the Jamaican situation with competition in electricity generation and JPS being the sole distributor. Currently, the JPS generates approximately 577 MW of the electrical energy supplied while the IPPs supply approximately 190 MW to JPS for distribution to its customers.

Kessides further highlights that since the early 1990s many countries in Asia, the Caribbean, Central America, Eastern Europe - and to a lesser extent the Middle East and Africa - have adopted variations of the single buyer electricity market structure. It has been the preferred approach for the variety of technical, economic and institutional reasons as it:

- Promotes rapid investment and expansion by shielding the financiers of generation projects from market risk and retail-level regulatory risk.
- Facilitates system balancing, that is, the balancing between the planned and actual output of individual generators and between the planned and actual outputs of individual distributors.
- Provides the necessary scale and expertise to efficiently contract for energy, power, and ancillary services and improve system reliability.
- Can be implemented quickly because it does not require significant changes in the operating culture or sector policy.

While there are also challenges with this model, as can be expected, it provides a starting point to the process of introducing competition into electricity markets.

Requirements for a more competitive electricity market structure

The options for introducing more competition in Jamaica would need to be tailored to the country's specific circumstances. In theory however, if it were determined to introduce wholesale competition this would perhaps involve distributors purchasing directly from generators and selling to customers. Retail competition at the most extreme would involve competition on sale to individual users. The perceived benefits would be lower cost, assuming that competitors can distribute and retail at costs lower than JPS. Economists would also argue that this approach reduces the scope for cross subsidies which are not good for markets.

Furthermore, for our electricity market to be developed into one of the more competitive structures such as *wholesale* or *retail competition*, critical issues including the economic, physical and legal feasibilities have to be examined.

In examining the economic and physical feasibility, due consideration would need to be given to, inter alia: calculating the cost that would be attributable to accessing the JPS' transmission and distribution system; the cost benefits that would accrue to both the private distributors and the customers; the market size and the number of private distributors that would be allowed into the market to ensure viability and greater efficiency.

With regard to the legal possibilities, as is already known, the government of Jamaica would need to enter into negotiations with the JPS on its current licence with a view to breaking the company's monopoly on electricity distribution, as is provided for in the 2001 All Island Electric Licence. Under the said licence, the JPS has a monopoly on transmission and distribution until 2021. If the negotiations are successful, then a separate legal structure would need to be developed for the private distributors.

Additionally, Kessides posits that several prerequisites must be met for a strictly competitive electricity market to succeed:

1. Buyers must have a spot market or power exchange - where buying and selling occurs – as well as a forward market, where market participants can negotiate contracts.
2. A sufficient number of unaffiliated suppliers are required as competitive entry will be inhibited if a single supplier dominates the market.
3. There is a need for active participation by as many customers as is economically feasible in both long and short-term markets.
4. There is the need for an economically reliable transmission network so that each location on the network faces sufficient competition among distant generators to preclude localized monopoly. For transmission prices to encourage efficient use of generation and transmission resources, they must reflect generators' full impacts on transmission costs, including system congestion, stability and reliability.

The need for a credible, effective, fast-acting regulatory mechanism to deal with flaws in market design and encourage efficient behaviour by market participants. This is especially critical when wholesale electricity markets are established without the prerequisites described above.

The best suited market structure

There are numerous arguments outlining the benefits and challenges of the different types of market structures. Additionally, case studies detailing the experiences of countries, like Chile who in the 1980s embarked on a radical restructuring and privatization program of its electricity market structure, can assist other economies in deciding whether a complete liberalization of its electricity market is the best option. That decision making process however, must include a close examination of the characteristics, prerequisites and implications – as is outlined in the above paragraphs – of the different types of market structures.

In regard to our specific situation, any analysis carried out would have to determine whether our market conditions can satisfy the prerequisites required to succeed at a completely liberalized electricity market structure. The ultimate decision made must ensure the continued economic and social wellbeing of the country; while at the same time promote efficiency.

Article provided by the Office of Utilities Regulation

Caribbean Cement Company Limited: Meeting the Needs of a Changing Business Environment

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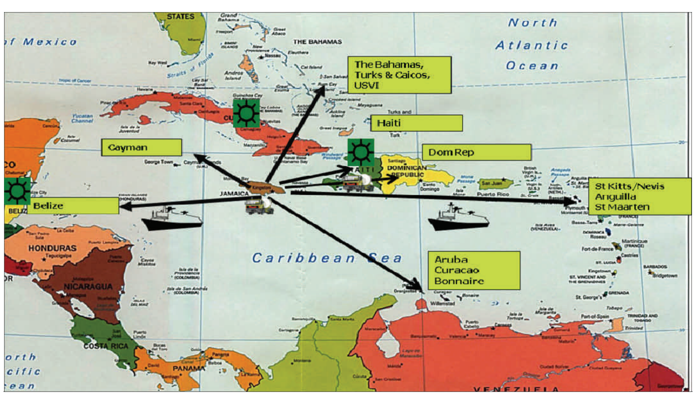

Carib Cement is an iconic Jamaican Company that is playing a significant role in building Jamaica. As the sole manufacturing facility in Jamaica the Company has been able to use indigenous resources to provide one of the key ingredients to the building industry, while at the same time effecting net savings in foreign exchange through import substitution. The Company has a staff complement of 389 permanent employees engaged in a range of activities. These persons include a number of professional groupings including engineering, finance, logistics and marketing supported by a competent cadre of technicians and artisans. It is estimated that the Company provides indirect employment for an additional 1,000 Jamaicans by virtue of other direct related activities involved in supporting the production process and the distribution of its products.

We recognize that whatever the key attributes of the product we deliver are, we also provide several intangibles that are often equally important to the product characteristics. Further, in a competitive environment, it is often the leverage and management of these intangibles that distinguish us from our competitors. The service we provide and the relationships we maintain are the competitive edge that makes us successful.

Article contributed by Caribbean Cement Company Limited

Antidumping and Competition Law in conflict

BY KEVIN HARRIOTT

COMPETITION POLICY ultimately shapes the very structure of markets in Jamaica. For example, an ill-conceived policy may inadvertently erect artificial impediments and serve to frustrate the entry of otherwise efficient suppliers. This would unduly limit the benefits Jamaicans enjoy from the economy's scarce productive resources.

In its broadest conceptualization, competition policy is defined as a collection of legislation, polices and regulations reflecting the Government's attitude toward the organization of commercial trade within and across its borders.[1] The main component parts of competition policy are: competition law; antidumping law; privatization policy; economic deregulation; intellectual property rights; and national industrial policy.

Competition law reflects the Government's attitude toward goods and services ('products') supplied and consumed by market participants located within national borders. Antidumping law addresses commercial trade arising from trading across national borders. The objective of competition policy is to ensure that businesses do not unduly hinder the competitiveness of the environment in which products are traded within and across its borders. The justification for promoting competitiveness as the primary means of organising economic activities stems from the fact that competition, when compared to other forms of markets, provides the greatest level of public benefits.

Competition as an ideal target of government policy

As mentioned above, the goal of competition policy is to promote and preserve the competitive environment in which products are traded within and across national borders. To assess the legitimacy and feasibility of pursuing this goal, one need to understand what is meant by a "competitive market" and appreciate the public benefits generated by competitive markets, relative to benefits generated by alternative environments in which products are traded. The theory of perfectly competitive markets has been rigorously developed by economists since as early as the eighteenth century. The most common way of defining a competitive market is to refer to its structural characteristics. Standard economic texts define a perfectly competitive market as one in which there are (i) numerous sellers and buyers; (ii) homogenous products; (iii) fully informed consumers; and (iii) no barriers for sellers entering and exiting the market. See (Carlton and Perloff 2005, Chapter 1) for an excellent description of variously organized markets.

For the purpose of designing public policies, however, a competitive market is a desirable goal more for its performance than for its structural characteristics. Specifically, the level of economic surplus generated by competitive markets is unsurpassed by any other means of organizing commercial trade. Consumer surplus arise from the fact that the value consumers attribute to consuming a product generally exceed its price; the lower the price, the greater the consumer surplus. In competitive markets, price is set to cover only the (marginal) costs of production as competition removes the incentive for suppliers to increase price above these costs. Competition therefore allows more individuals to consume the product and offers with the maximum level of surplus, relative to other markets. For purposes of this discussion, we describe such market results as the "competitive outcome." Similarly, producer surplus arise from the fact that the revenue generated from sales is often at least as great as the economic costs associated with making the products available for sale.[2] Economic costs refer to the opportunity costs of supplying the product.

Seminal research published by economist Bertrand has demonstrated that there are markets with characteristics which differ from the competitive market structure but which nonetheless results in the competitive outcome. This is to say that there are markets which do not have the structural characteristics of the competitive market which nonetheless generate the same level of surplus.[3] Specifically, Bertrand shows that in markets where there are only two suppliers of identical goods, and suppliers compete on prices, then the price will reflect only the (marginal) cost of supplying the product. Since we are interested in the performance of markets and not the characteristics of the markets themselves, we henceforth use "competitive markets" to describe markets which result in the competitive outcome. In competitive markets, products are supplied at lower prices, higher quality and in greater quantities and varieties, relative to non-competitive markets. Competition provides suppliers with the proper incentives to meet consumers' demand for affordable, high quality products using the least possible amount of productive resources.

Implementing competition policy

Implementing competition policy is inherently problematic since the policy encompasses numerous legislation, polices and regulations which are implemented by various agencies with distinct expertise. Such a scenario has implications for the success with which any of the component parts can be enforced without compromising the enforcement of other component parts. For example, legislation governing intellectual property rights authorizes the inventor of a novel product/idea to exclude other individuals from using the product/idea for commercial gain. Such authority conflicts with the enforcement of competition law which seeks to remove barriers to entering or leaving any market. Competition law in Jamaica resolves this issue by exempting conduct pursuant to the exercise of intel-

lectual property rights from the scope of competition law enforcement. See (Lee and Harriott 2006) for a discussion on the conflict between intellectual property rights and competition law in Jamaica. We now describe the divergent philosophy governing antidumping and competition legislation.

Competition Law

Competition law restricts the conduct of enterprises engaged in commercial trade within national borders. The types of conduct prohibited by competition law are generally classified into two broad categories: competition protection and consumer protection.

Competition protection

Competition protection provisions indirectly safeguard the welfare of consumers by protecting the competitive environment from conduct which have the demonstrable effect of substantially lessening competition of individual enterprises. Conduct of individual enterprises is reviewable under abuse of a dominant position provisions while conduct by more than one enterprise is reviewable under merger review provisions and collusion provisions. Merger review differs from the other two provisions in the sense that it allows the competition authority to block an economic transaction (namely merger) based on anticipated conduct, while the other two provisions review conduct after the fact.[4] It is instructive to note that, without more, some conducts are prohibited only if they are likely to hinder the competitive environment.[5] To establish a breach under these provisions of competition law, therefore, the competition authority must demonstrate that competition is likely to be substantially lessened. Given the direct correspondence between the competitive outcome and consumer welfare, effective enforcement of competition law, by extension, also safeguards consumer welfare.

Consumer protection

Consumer protection provisions directly safeguards consumer welfare by preventing consumers from deceptive practices of enterprises which may not necessarily hinder the competitive environment. The types of conduct prohibited under these provisions include misleading advertising, bait-and-switch, double -ticketing, etc.

Antidumping Law

Antidumping law is limited with respect to the scope of conduct prohibited. It prohibits only conduct defined as "dumping." In antidumping law, dumping is said to occur when a manufacturer exports its product at a price (i.e. the 'export price') which is below the price at which the product is sold for in the market of origin (i.e. the 'normal value').[6] Dumping, without more, is not prohibited. It is prohibited only if it is deemed to cause "material injury" to market in which the product is exported (i.e. the 'domestic market'). Further, in the application of antidumping law, injury to domestic market is synonymous with injury to domestic producers. To establish a breach under antidumping law, therefore, the authority needs to demonstrate injury only to domestic producers. Accordingly, enforcing antidumping law safeguards the welfare of domestic producers and not necessarily that of consumers.

The Divergence between Competition and Antidumping Laws

Competition and antidumping laws determine the legitimacy of a given conduct using different standards (tests). Under competition law, conduct is prohibited only if it lessens competition or otherwise leads to a loss of consumer welfare. Under antidumping law, conduct (specifically, dumping) is prohibited only if it injures domestic producers. The problem with having different standards for competition and antidumping law becomes apparent when one realizes that the conduct described as dumping is identical to the conduct reviewed by the competition authority known as "price discrimination". Specifically, price discrimination entails charging a higher price to customers who are willing and able to pay the higher price, and a lower price to customers who are either unable or unwilling. Under some conditions, without price discrimination some customers would not otherwise have access to the product. Price discrimination is practiced in many industries such as the airline industry whereby passengers travelling in the first class section of the aircraft are required to pay a significantly higher fare than passengers travelling in the economy class section; further, the difference in fares does not reflect only the difference in the cost of providing the service to these groups of passengers. The effects doctrine is a guiding principle in competition law enforcement which dictates that conduct which have similar effect on the market should be treated similarly. Based on this principle, therefore, we have the untenable position in competition policy whereby price discrimination on the part of domestic suppliers is regulated differently from price discrimination on the part of foreign suppliers.

This points to a need to harmonize competition and antidumping law, at least to the extent that it relates to scrutinizing price discrimination. In this regard, there are three alternative ways to harmonize the legislation: (i) amend antidumping law to conform to competition law; (ii) amend competition law to conform to antidumping laws; (iii) develop new standards and amend both competition and antidumping laws accordingly. A discussion on the merits of the third option is beyond the scope of this paper. We will restrict the discussion therefore, to the merits of the first two alternatives.

Government policy should serve the interests of the governed. To the extent that promoting the welfare of the many consumers, rather than the welfare of the few domestic producers, is more consistent with serving the interests of the public, harmonization should involve amending antidumping law to conform with competition law. Such harmonization will involve a redefinition of two key concepts in antidumping law: (i) market definition and (ii) dumping.

Defining "markets"

Antidumping legislation implicitly identifies the domestic market to comprise only of domestic producers- to the exclusion of current and future importers which are presumably seen to operate outside of the domestic market. This view is inconsistent with how markets are identified in competition law.

For the purpose of evaluating the competitive effects of any challenged conduct (including dumping), a market is defined to identify the set of products which could be affected by the conduct. Market definition is a fundamental concept in competition law because if the market is not correctly identified, one is unlikely to accurately identify the competitive effect of the challenged conduct.

The Small but Significant Non-transitory Increase in Prices (SSNIP) Test is the most prevalent method used to identify the most appropriate market to evaluate the competitive effects of a given conduct. An important observation arising from this definition is that both importers (existing and potential) and producers are equally legitimate participants in defining the market; and neither party is given prominence over the other. In this manner, the definition of the market is consumer-oriented in that it seeks to identify the set of products which consumers perceive to be substitutable in satisfying a specific desire or need. What matters to the consumer is that the product is capable of satisfying her need. All other things being equal, the technology used to make the product is of little significance. What matters to the consumer is the value for money (based on factors such as taste, price, etc.) offered by each farm. By similar reasoning, one should understand that the only difference between producers and importers is that they utilize different technologies. In this sense, importation should be viewed as an alternative method (i.e. technology) of making the product available to consumers rather than as a necessarily inferior method. Indeed, the benefit of importation is seen in industries such as automobiles where domestic production is infeasible in Jamaica. But even in industries where domestic production is feasible, importation could still be useful to consumers in the sense that very few individuals could deny that Jamaicans have benefitted from the importation of brands such as Clarks, Nike, Reebok, Puma, Adidas, etc.

This is not to say that importation is always best for Jamaica and therefore should never be challenged. Rather, the extent to which importers prevail in the Jamaican market should be determined only by the market forces and not by the undue influence of the Government by way of the application of misguided public policy. To convey to one group of suppliers, a greater right to participate in the market would be to distort the market incentives for suppliers to become efficient; which would ultimately deprive Jamaican consumers of the potential surplus which could be realized.

If importation is more efficient than production, with respect to supplying the product to consumers, then the competitive market would favour importation; otherwise it would favour production.[7] In so doing, each competitively organised market would meet the needs of consumers using fewer productive resources and thus allow more resources to be available for use in other markets.

Defining "dumping"

In antidumping law, "dumping" is said to occur whenever the export price of a product is less than the price of the product in the home market. Further, dumping is prohibited only if it injures the domestic market. This conduct, as described, is referred to in competition law as price discrimination and known to be beneficial to consumers under some conditions, and detrimental to consumers under other conditions (Carlton and Perloff 2005, Chapter 9). This means that it is appropriate to challenge the conduct as it has the potential to have adverse effects on the industry. Presumably, the test used to prohibit the conduct should be sufficient to identify the conditions under which the conduct would be beneficial; unfortunately, this is not the case under existing antidumping law. Specifically, the current application of antidumping law will successfully challenge conduct which is unlikely to harm the domestic market. This over-deterrence will ultimately discourage legitimate competitive conduct, to the detriment of consumers.

To harmonise antidumping law with the principles of competition law, one would have to improve the tool used by antidumping law to filter conduct which is potentially harmful from that which is unlikely to be harmful. To show that the existing tool is inadequate, we use competition law analysis to expose the fundamental flaw in the conceptual framework on which antidumping law is predicated. As mentioned earlier, dumping occurs when the foreign producer price discriminates between customers in the home market and customers in the export market. Based on received research into price discrimination, we know that the price will be lower for the customer group whose demand is more sensitive to price increases.[8]

To determine which customers are likely to be more sensitive to price increases, we need only compare the characteristics of customers in the home market with the characteristics of customers in the export market. One important distinguishing characteristic between the two groups is the difference in transaction costs associated with the acquisition of the product.[9] Specifically, the transaction cost for customers in the export market (i.e. the 'importers') is considerably higher than the transportation cost for customers in the home market. The transaction cost for importers comprise shipping (insurance and freight) the product to, and clearing (tariff, duties and fees) the borders of, the importing country. Importers have what is said to be a derived demand for the product; that is, the product is desirable only to the extent which it could be profitably resold to consumers in the domestic market. If importers which face significant transaction costs compete with domestic producers which do not incur said cost, then in most circumstances foreign producers must offer discounts to stimulate the (derived) demand from importers.[10] Accordingly, importers are likely to be more sensitive to price increases, than domestic customers. It is reasonable, therefore, to expect that the price in the export market will be less than the price in the home market. This is the first of two important arguments used to support the convergence of competition and antidumping law: dumping is necessary, in most cases, to stimulate demand in the export market and consequently facilitates competition in the domestic market.

Demonstrating material injury

Section 12 (2) in the Regulations of the Customs Duties (Dumping and Subsidies) Act states that:

"The effect of the dumped or subsidized imports on prices shall be assessed by reference to-

> *whether there has been significant price undercutting or depression in the price of like goods produced in Jamaica; or*
>
> *whether there has been to a significant degree, a prevention of price increases which would otherwise have occurred in the price of like goods produced in Jamaica."*

It is well-established in competition economics that, all other things constant, the price charged in a monopoly market exceeds the price charged by other market structures. This is to say that the price charged when there is only one current or future supplier of the product tends to be higher than the price charged when there are at least two suppliers in the market. If there is entry in a previously monopolized market, then the following changes will result:

i) *Price will decline.* The intuition behind this result is that when additional enterprises enter, consumers' demand will be more sensitive to price increases of the incumbent since they have at least one other source from which to obtain the product. When entry occurs, it is in the best interest of the incumbent to lower prices below the monopoly price level, to stem the flow of its customers to rival suppliers. The extent to which the price declines will depend primarily on the capacity of the entrants to serve the market. It has been shown that the incumbent will lower its price to the competitive level even if only one enterprise enters, so long as the entrant has the capacity to serve the entire market and enterprises compete on prices;

ii) *Incumbent's share of the market will decline.* This result is trivial as the incumbent held 100 percent of the market as a monopoly but less than this percentage when entry occurs;

iii) *Incumbent's profit will decline.* This result stems from the decline in the incumbent's price;

iv) *Total amount sold by the market will increase.* The reduction in price will stimulate additional demand from two groups of individuals. Firstly, individuals ('marginal consumers') who could not afford the product at the monopoly price would now be able to afford the product at the lower price. Secondly, individuals ('infra-marginal consumers') who could have afforded the product at the monopoly price would be able to afford even greater quantities at lower prices. This result is consistent with the law of demand which states that all other things constant, greater quantities will be demanded at lower prices;

v) *The volume supplied by the incumbent may decline.* The entry will have an ambiguous effect on the volume supplied by the incumbent. If the supply capacity of the entrants exceeds the additional demand stimulated by the lower price, then the volume supplied by the incumbent would decline. Similarly, if the supply capacity of the entrants is less than the additional demand simulated by the lower price, then the volume supplied by the incumbent would increase, barring any production capacity constraints of the incumbent; and

vi) *Total surplus will increase.* Monopolists are able to profitably sustain prices above competitive levels by restricting the volume of products supplied to the market. Although the surplus enjoyed by the incumbent will decline upon entry, the total economic surplus generated by the market will increase as there will be an improvement in the surplus accruing to the entrants and consumers which participate in the market at lower prices.

It is evident, therefore, that the tests for material injury is crafted more to protect the domestic producer (i.e. the incumbent) than it is to protect the domestic market. The very conditions that can be used as evidence of material injury under antidumping law coincide with outcomes [identified as results (i) through (vi.)] which reflect that competition is being enhanced. This is a telling provision as it suggests that antidumping law is sterile with respect to safeguarding competitive markets and hence consumer welfare.

We now state the second of two important arguments: Evidence sufficient to establish "material injury" in antidumping law, is consistent with competition being enhanced in the industry.

The two arguments lay the foundation for encouraging a revision of antidumping law. Taken together, the arguments state that dumping is not a useful tool for screening harmful conduct and the tests for establishing material injury is not an accurate means to demonstrate that consumers are likely to be harmed by dumping.

Realizing convergence

To harmonise dumping with the principles under competition law, one would have to make three fundamental revisions: (i) redefine the domestic market to include all current suppliers or potential suppliers of the product- regardless of whether the product is imported or domestically produced; (ii) revise the circumstances under which the conduct is challenged; and (iii) revise the evidence required to establish a breach.

Redefining markets

The domestic market should be redefined to conform to the concept of relevant markets in competition law. Using the concept of relevant market definition is likely to clarify the likely effect of dumping on the public's welfare.

Revising the filtering of potentially harmful conduct

The purpose of defining the conduct described as dumping is to filter conduct which authorities believe could be harmful to the domestic market. Under antidumping law, offering a product in the export market at a price which is lower than the normal value is sufficient to trigger an investigation. We argue that the filter seems arbitrary at best in that whenever transaction costs are higher for importers, price must be lower in the export market to stimulate competition in, and therefore improve the performance of, the domestic market.

Competition law offers a more useful benchmark for challenging a given pricing strategy. The price of any good is determined by the characteristics of the market in which the product is sold. All other things being constant, prices tend to be higher in markets in which consumers' demand is less sensitive to price increases. For example prices tend to be higher in markets where consumers have more disposable income. The fact that the export price is lower than the normal value is no more indicative of potential harmful effects in the domestic market, than if the export price was greater than the normal value. A more useful benchmark for challenging a conduct is the extent to which the domestic price is below the cost of making the product available to consumers in the domestic market. This conduct is referred to as resale below cost (RBC) in competition law. A useful discussion on the conduct is presented by the Organisation for Economic Co-operation and Development (OECD 2006).

Revising evidence of breach

To establish a breach, one would have to demonstrate that the RBC is likely to injure competition in the domestic market rather than domestic producers. Establishing injury to competition would require demonstrating harm to consumers and equally efficient suppliers (Salop 2000, 192).

Conclusion

Antidumping law is at odds with competition law. The application of antidumping law appears to benefit domestic producers, to the detriment of Jamaican consumers. Commercial activity should be organized solely on efficiency considerations and not on the technology (such as whether to produce or to import) used to deliver the products. To ensure that consumers benefit from the application of antidumping law, two fundamental changes must be made. Firstly, it must be recognized that importers are as legitimate as domestic producers regarding participation in the domestic market; and it should be made clear that it is competition in the market which must be protected and not the market itself. Secondly, the conditions which trigger a breach must be revised to compare the domestic price with the cost of making the product available in the domestic market. Revising antidumping legislation to conform to competition law would not necessitate the development of new tools as scrutinizing the conduct can readily be integrated within existing competition law.

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Endnotes

[1] In its narrow definition, competition policy is used synonymously with competition law.

[2] Economic costs refer to the opportunity costs of supplying the product.

[3] Specifically, Bertrand shows that in markets where there are only two suppliers of identical goods, and suppliers compete on prices, then the price will reflect only the (marginal) cost of supplying the product.

[4] Merger review is said to be an *ex ante* provision whereas abuse of dominance and collusion provisions are said to be *ex post.*

[5] I make reference to rule of reason conduct. There is another class of conduct, known as per se conduct, which is prohibited without need to establish its effect on competition.

[6] The use of the term "value" in antitrust law differs significantly from how the term is used in economics. To be clear, what is described as "normal value" by antidumping law is simply the price of the good in the country in which production occurs. In economics, the value of a product to a consumer refers to the maximum price that the consumer would be willing to pay to acquire a product whereas the price refers to the money that the consumer actually pays. Although consumers may pay the same price for a good, its value to each consumer may differ substantially. Notwithstanding, a rational consumer will purchase a product only if its price does not exceed its value to him.

[7] Another alternative is that the market is served by a mix of importation and production technologies; this would occur if importation was equally efficient as production.

[8] Economists would say that prices will be lower for the customer group with the more elastic demand. See (Carlton and Perloff 2005, 5) for discussion on the effects of transaction costs on market participation and performance.

[9] Transaction cost refers to all non-price costs associated with acquiring a product.

[10] With the exception being cases where the domestic producer is considerably less efficient than the foreign producer in manufacturing the product.

Can Government support to industry in an economic downturn be regarded as a prohibited subsidy under WTO law?

BY KEISHA-ANN THOMPSON

IN THE CURRENT ECONOMIC CLIMATE we see governments around the world giving support in various forms in an effort to mitigate the effects of the economic downturn on their economies. In many instances such support is given directly to the industry to promote exports, and also there are laws that promote the use of domestic over imported inputs, all with the ultimate aim of promoting economic recovery. A question that often arises is whether or not these could qualify as illegal subsidies under international trade rules. In this brief note we set forth the legal requirements for subsidies in an effort to highlight the critical points for consideration to make such a determination.

The World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (SCM) places the support that can be given by government into two distinct categories, prohibited (Article 3), actionable (Article 5, and 8[1]). Benitah (2001) reframes this as on the one hand as effects based norms and on the other those norms[2] that prohibit behaviour. In respect of prohibited subsidies, these are of two types, those contingent on export performance (export subsidies) and those that promote the use of domestic over imported inputs (import substitution subsidies). The type of support mentioned therefore would seem to fall in this category.

The stages for the examination of such prohibited subsidies were given in *Canada - Aircraft Credits and Guarantees.*[3] First "a Member must … establish (i) the existence of a subsidy within the meaning of Article 1 of the SCM and (ii) contingency of that subsidy upon export performance."[4] It is noted that for such prohibited subsidies there is no requirement to prove specificity under Article 2, since by definition such subsides are deemed to be specific, whether widely dispersed or concentrated.

A subsidy under the SCM has to conform to the following three basic criteria:

- a financial contribution
- made by a government or public body
- that confers a benefit

Any practice that does not contain these three elements cannot be regarded as a subsidy, against which action can be taken. The actual meaning of each of these elements has been clarified to some extent through various rounds of disputes. Jackson (1997) notes that the requirement to show a financial contribution was one of the innovations of Uruguay, that effectively placed a limit on the universe of government actions that could be considered a subsidy. Gagne and Roch (2008) also point out that this detailed definition, along with the multiplicity of forms that subsidies can take, makes them difficult to identify and measure.

With respect to the issue of financial contribution, Article 1 indicates that these could be:

- Direct transfers of funds
- Potential direct transfers of funds
- Government revenue that is otherwise due is forgone or not collected
- Provision of goods or services or purchase of goods

Once we have determined that a financial contribution exists, the next step is to determine if there is a benefit to the recipient. The Panel in Canada-Aircraft[5] provided that a benefit exists when it (the subsidy) places, "the recipient in a more advantageous position than would have been the case but for the financial contribution. In our view, the only logical basis for determining the position the recipient would have been in absent the financial contribution is the market. Accordingly, a financial contribution will only confer a "benefit," i.e., an advantage, if it is provided on terms more advantageous than those that would have been available to the recipient on the market." Though the concept of market has not been defined, we can infer from the decision in US-Softwood Lumber V, that the market should not be distorted, such as when there is heavy state involvement. In a situation where there is extensive government involvement it will be difficult to determine what precisely is the appropriate market benchmark. However, the WTO jurisprudence has supported the use of alternatives to the actual market, such as a third country market, when there is heavy state involvement.

After having established that we have a financial contribution by a government, that confers a benefit, we will then need to determine if we have an export subsidy or one that promotes the use of domestic over imported inputs. An additional complication will be those laws or programmes that may not on their face have a link to exports or the use of domestic inputs.

What is required therefore is a careful examination of the programmes or policies at issue, since specific criteria must be met before action can be taken. What is true is that WTO law prohibits this behaviour outright, so that in providing support, governments have to be mindful of international trade laws. While it may seem on the surface that many of these support programmes could be cast into this mould, many Member's may not want to challenge them because of the precedential effect this may have, as well as the stark economic realities that will result from their withdrawal. Notwithstanding, in a climate where all economies are suffering, should economic recovery be asymmetrical, such policies may be viewed as “beggar-thy-neighbour” policies and pressure may mount to directly challenge them. Increasingly we see where policies that were traditionally thought of as ‘high policy and a matter of sovereignty, such as development policies or exchange rate policy, are no longer immune from challenge under international trade laws.

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Endnotes

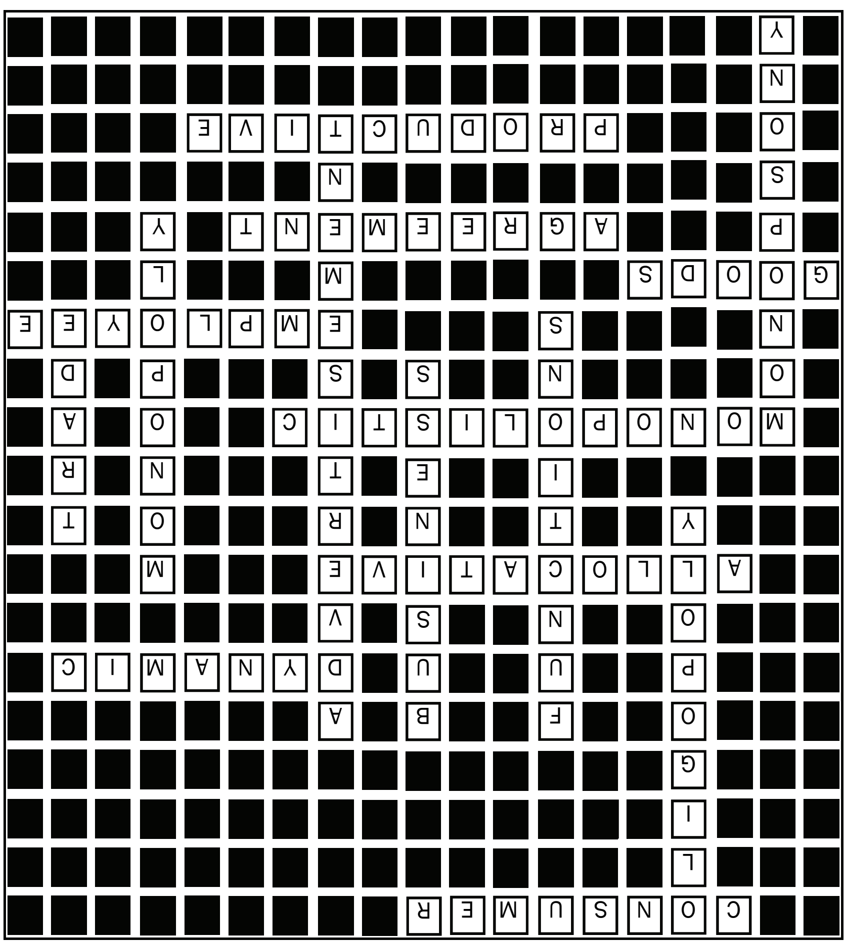
[1]Given the expiration of Article 8, all subsidies in this category can be considered as actionable.

[2]This pertains to actionable subsides which can only be a cause of action if they generate adverse effects. These effects generally pertain to the market in which the subsidy is exerting its distortionary effect so as to affect another Member. There are three types, injury to the domestic industry, serious prejudice and nullification and impairment.

[3]Panel Report, Canada – Export Credits and Loan Guarantees for Regional Aircraft, WT/DS222/R and Corr.1, adopted 19 February 2002, DSR 2002:III, 849, (Canada – Aircrafts Credits and Guarantees).

[4]Canada – Aircraft Credits and Guarantees, para. 7.16.

[5]Appellate Body Report, United States – Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R, adopted 31 August 2004, DSR 2004:V, 1875, (US- Softwood Lumber V).



Solution

FTC Statistics

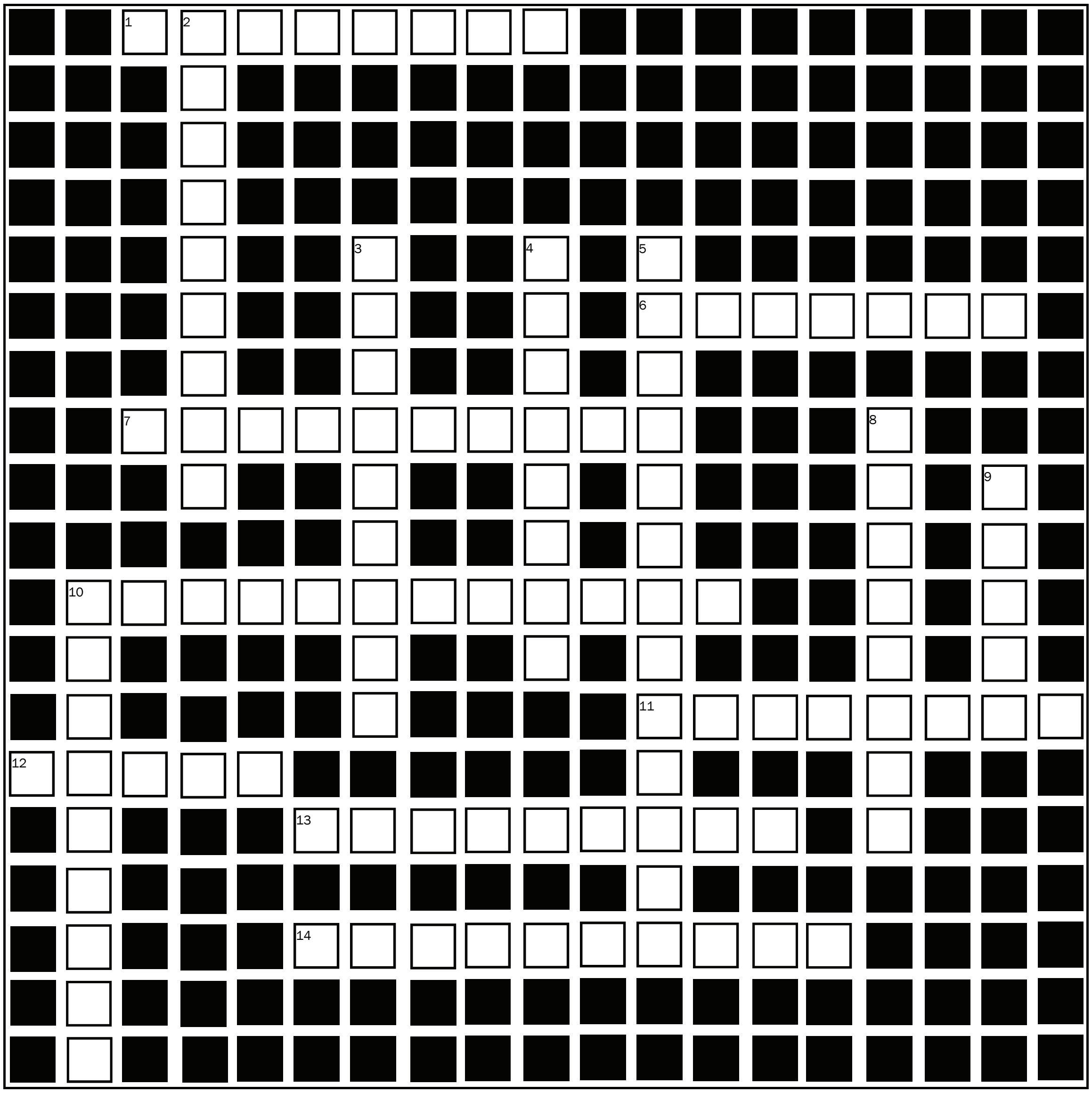
Number of complaints received during the period April 1, 2008 - September 30, 2010

PRODUCTS AND SERVICES	Year 2008/2009	Year 2009/2010	April - September 2010
Automobiles	15	20	16
Business Practice	3	1	1
Clothing/Accessories & Textiles	2	1	0
Computer	2	1	5
Construction/Home Repair Supplies	5	5	0
Education	9	15	9
Energy	1	5	3
Financial Services	12	12	6
Food/Supplements & Beverages	5	6	1
Funeral Services & Supplies	2		-
Gaming & Contest	1	2	2
Gardening Supplies & Horticultural Products	0	1	-
Government Services	3	5	2
Household Appliances & Accessories	3	19	2
Household Furnishings	4	7	5
Industrial Machinery & Products	5		-
Insurance[1]	3	6	10
Leisure & Recreation	9	5	3
Medical Supplies, Services & Device	1	2	1
Office Furnishing/Equipment & Supplies	1	1	0
Personal	1	-	-
Petroleum Products & Accessories	2	4	2
Professional & Specialist Services	6	8	4
Real Estate	6	10	-
Telecommunications Equipment/Services	49	59	56
Transportation Systems	6	6	4
Utilities.	6	4	-
Other[2]	2	4	4
TOTAL	**164**	**209**	**136**

[1] Includes Auto, Health, Life and Peril.

[2] Includes product areas such as Agricultural Products, Funeral Services, Auto Repair Services and Industrial Machinery & Products

puzzle



Across

1. A ______________ is a person to whom goods or services are intended to be supplied to.
6. ____________ efficiency occurs where producers constantly improve on their products or create new ones over time.
7. _____________ efficiency occurs when goods and services are distributed according to consumer preferences in terms of quantity, characteristics and prices.
10. _____________ competition is a market structure in which several or many sellers each produce similar, but slightly different products.
11. Person who works under a contract of employment.
12. ___________ are all kinds of property other than real property, money, securities or chases in action.
13. Any arrangement or understanding whether oral or in writing which is intended or not to be legally binding.
14. _____________ efficiency occurs when the maximum number of goods and services are produced within the lowest possible cost.

Down

2. Market in which control over the supply of a commodity is in the hands of a small number of suppliers and each can influence prices and affect competition.
3. The powers and duties of the Fair Trading Commission are noted as a part of this.
4. Activity which is carried on for gain or reward.
5. A form of communication made to the public for the purpose of promoting the supply of goods or services.
8. Market in which there are many buyers and only one seller.
9. Exchange involving goods, services and currency.
10. Market structure in which goods and services are offered by several suppliers but there is only one buyer.

See solution on Page 30

Shirley Playfair Lecture 2010

Honourable Audley Shaw
Guest speaker

Bruce Bowen
Guest speaker

David Miller
Executive Director, FTC

Highlights from the 11th Annual Shirley Playfair Lecture. The Lecture was held at the Jamaica Pegasus hotel on September 9, 2010.

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