



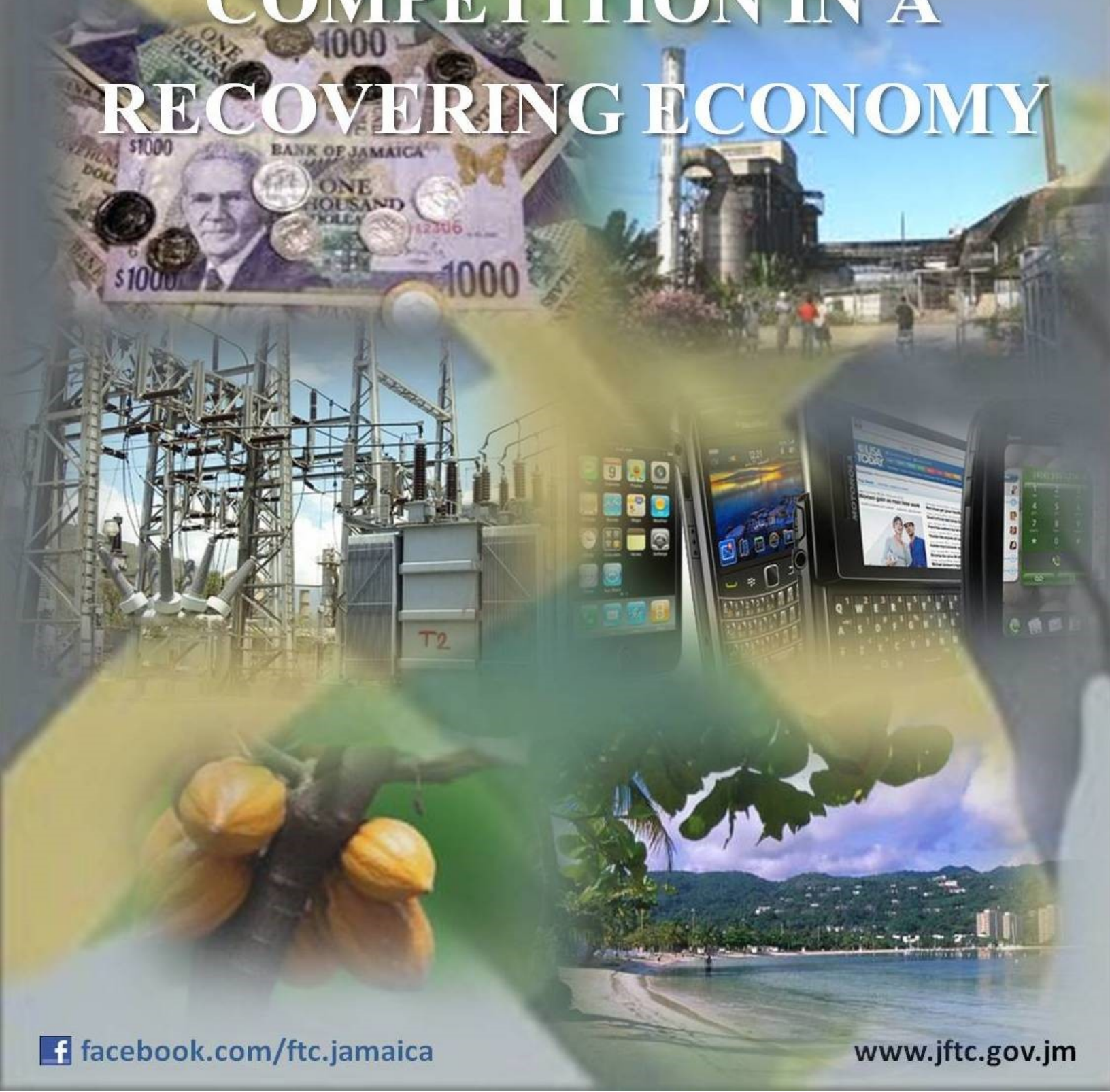
# COMPETITION MATTERS

**FAIR TRADING COMMISSION**

*'Ensuring a competitive marketplace'*

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## COMPETITION IN A RECOVERING ECONOMY





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**FOREWORD**

This 16<sup>th</sup> edition of *Competition Matters* broaches a discussion that is important, timely and relevant. Its collection of well-penned articles around the theme “**Competition in a Recovering Economy**,” will undoubtedly rally support for competition as best option for organizing economic activities in good and bad economic times. As the world continues to maneuver its way out of this seemingly expansive economic landmine, in search of the Promised Land of economic recovery, there are interests groups among us suggesting that competition should be the sacrificial lamb. In recent times, the voices of these groups have become even louder fueling baseless rumors that competition is inimical to the process of economic recovery.

Readers are treated with irresistible conceptual and practical arguments dispelling such unfounded notions masquerading as considered positions. In a clear expostulation of the dangers of side-stepping competition, Nakeeta Nembhard states in her article that “*Non-traditional exports, in particular food exports grew by 11.7% for the period January to August 2010. These achievements have enabled a renewed thrust to identify creative ways to leverage Jamaica's competitive advantages...*” and she goes on to explore a few sectors that have shown signs of growth and competitiveness and the factors that are contributing to their strengthening. *En masse*, the articles contained in this edition of *Competition Matters* touch on several industries including tourism, bauxite, sports, food distribution, health and agriculture, all of which allude to the benefits of having competition policy at the forefront of considerations in a country's attempt to grow its economy.

Aside from the articles, the magazine contains several interesting news items and statistics.

Happy reading!

*Kristina Barrett & Paul Cooper*

*Magazine Coordinators*



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## FTC challenges Digicel/Claro agreement

**T**HE FAIR TRADING COMMISSION (FTC) is challenging the agreement between Digicel Jamaica Limited (Digicel) and Oceanic Digital Jamaica Limited (Claro), which provides for Digicel to acquire control of Claro's operations in Jamaica. On December 9, 2011 the FTC filed a claim in the Supreme Court seeking a declaration that the agreement is in breach of Section 17 of the Fair Competition Act, on the basis that the agreement has as its purpose, effect or likely effect the substantial lessening of competition in the market for voice and text messaging services in Jamaica.

In the claim, the FTC states that the agreement effectively eliminates a significant competitive constraint as well as

delays or deters cost effective entry or expansion in the market. The FTC concluded that, since its entry in the market in August 2007, Claro has been exerting competitive pressure on Digicel. This was evident by the fact that Digicel steadily increased its promotional and value offerings to its subscribers, subsequent to Claro's entry. The increased competitive environment caused Digicel to offer its subscribers more talk-time for less money resulting in estimated consumer benefits of approximately \$16 billion between 2007 and 2011. Over that period Digicel reduced its average price by approximately 50% - its subscribers increased their talk-time by 39%, while their corresponding expenditure declined by 2%.

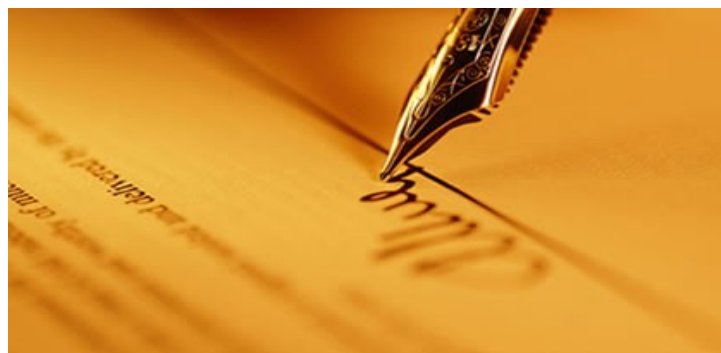
The FTC states that the agreement is likely to cause irremediable and irreparable damage to competition in the voice and text messaging services market in Jamaica, resulting in, among other things, higher prices and/or reduced promotions; fewer choice of products; lower product quality or customer service quality; and slower rates of technological innovation or adoption.

## FTC signs consent agreements

**F**OR THE YEAR 2011 the FTC entered into consent agreements with Appliance Traders Limited (ATL), Career Development Institute (CDI) and Jamaica AutoClub (JAC); and recovered legal costs totaling \$289,520.00.

Having investigated the conduct of ATL with respect to its representation in its 2010 Pre-Valentine's Day Sale; CDI with respect to its promise to provide NVQJ certification; and JAC, for its representations with respect to discounts on motor vehicle insurance premiums, the FTC concluded that in each instance the conduct amounted to a breach of section 37 of the FCA.

The FTC had received complaints alleging that ATL had changed, during the sale period, the prices on items it had advertised in a newspaper; and therefore ATL failed to provide items at the prices at which they were advertised. With respect to CDI, a student alleged that she participated in a Diploma course conducted by CDI which had represented that participants who successfully completed the course would also receive certificates from HEART Trust/



National Training Agency. The Complainant alleged that, although she and other students had successfully completed the course and received the requisite CDI certificate, CDI did not provide her or the other students with the HEART Trust/National Training Agency certificates.

In its brochure, JAC a member of the EMCD Group Limited stated that its members would have received an additional 10% discount on insurance premiums from participating insurance companies. However, prompted by a complaint, the FTC's investigation revealed that at least one of the listed participating insurance companies granted only a 5% discount, contrary to the representations made by JAC.

The FTC is pursuing several consent agreements with respect to activities within the used car and telecommunications industries.

# 12<sup>th</sup> Annual *Shirley Playfair* Lecture



Panelists at the 12th Annual Shirley Playfair Lecture

THE TWELFTH LECTURE in the Annual Shirley Playfair Lecture Series was held on Tuesday, September 13, 2011 at the Jamaica Pegasus Hotel. The theme was **“Coordinating to Compete: Limitations of the Motor Vehicle Insurance Market”**; and the main speaker was Mr. Harold Wong, Senior Manager – Underwriting of Advantage General Insurance Company. Mr. Wong was joined on a panel by Mr. Leon Anderson, Deputy Executive Director of the Financial Services Commission (FSC) and Mr. Cedric Stephens, Insurance Consultant, both of whom made presentations. Miss Wendy Duncan, Legal Officer at the FTC, presented on several key highlights and issues that are raised in the Staff’s study on the motor vehicle insurance market. The three panelists responded to questions from the floor in a discussion segment that was moderated by Mr. Emile Leiba, a Commissioner of the FTC.

The programme started at 3:20 pm with welcome and opening remarks from Mr. David Miller, Executive Director of the FTC; followed by Mr. Reginald Budhan, Permanent Secretary in the Ministry of Industry Investment & Commerce, who offered remarks.

Mr. Wong’s presentation highlighted the financial plight of the industry noting that for the five years from 2006 to 2010 the insurance companies have recorded underwriting losses; and experienced a reduction in losses in 2010 only after the implementation of rate increases in 2009. He noted also that the industry suffered reduced investment income attributable

to the Jamaica Debt Exchange (JDX) Programme.

Mr. Wong stated that, “with the substantial decline in investment income and the increasing regulatory pressure for increased capital, the need to drive reserve increases can only be achieved through significantly improved underwriting contributions. Hence rate increases were inevitable. Increases were slow in materializing during 2010 but once the full impact of the JDX was felt, the rate of increase accelerated”.

Whilst Mr. Wong acknowledged the concerns of motorists with respect to high motor vehicle insurance premiums, he noted that premium income (motor) in Jamaica grew by only 5.9% over the years 2008 to 2010; and that the maximum rate increase for Advantage General was 25%. He stated that the Office of Fair Trading (OFT) has issued a ‘call for evidence’ as it looks to establish if any competition or consumer issues need to be addressed in the motor vehicle insurance market in the United Kingdom after receiving reports that motorists have faced average increases in premiums of up to 40% in a year.

Mr. Anderson’s presentation highlighted the role of the FSC with respect to regulating the industry. He emphasized that the FSC does not have the power to stipulate the premiums that insurance companies should charge or risks that they should accept; and that the FSC’s authority is to ensure that the companies are adequately and appropriately capitalised to match their risks. He noted that if the FSC had been given such authority to determine premiums and to determine risk exposures while having its existing power to demand that



insurance companies increase their capital requirements, the regulatory framework in Jamaica would be heavy-handed, burdensome and stifle the stability and life of the insurance industry. Mr. Anderson made the point that there would be a conflict of interest as regulating price is not always compatible with the goal of ensuring that the companies are well capitalised and financially sound.

Mr. Stephens highlighted some of the problems that consumers face, such as increased premiums and insufficient and incomplete information provided by insurance companies and brokers. He noted that brokers need to play a greater role in facilitating consumers' needs and helping them to better understand the terms and conditions of their insurance contract.

Following the Lecture, a vibrant, interesting and provocative discussion ensued in which several members of the audience posed questions and directed comments to the presenters.

Several organizations relating to the motor vehicle insurance market were

represented. These include Caribbean Assurance Brokers, Allied Insurance Brokers, British Caribbean Insurance Company, Jamaica International Insurance Company Limited, MSC McKay Jamaica Limited (valuators), and Fraser Fontaine & Kong. Other organizations represented were: RBC Bank Jamaica Limited, Broadcasting Commission, Office of Utilities

Regulation, Financial Services Commission and Trade Board Limited. It is noted that Chief Justice of Jamaica, the Hon. Zaila McCalla and Mr. Justice Seymour Panton, President of the Court of Appeal, were present. The comments and questions from these representatives were quite instructive; and therefore spurred further interests and discussions.



*Section of the audience. Attendees pose questions to panelists.*

## Profile of MR. EMILE G.R. LEIBA



Mr. Emile Leiba, an Attorney-at-Law, was appointed Commissioner of the Fair Trading Commission in June 2011. Mr. Leiba was admitted to the Jamaican

Bar in 2002. He is a graduate of the University of the West Indies with a Bachelor of Laws, LL.B (Hons.) and of the Norman Manley Law School where he was awarded the Madge Morgan Prize for Trial Advocacy.

He has practiced in Property and Commercial law prior to specializing in Litigation; and he currently practices primarily in the areas of Commercial Litigation, Maritime Law and Employment Law. Mr. Leiba has acted for several international and local clients and litigated at the Supreme Court and Appellate levels; and has also been the main speaker at several Employment Law and Maritime Seminars and presented on the effects of recently passed employment law legislation. He has acted for several

clients in claims for bargaining rights by unions, contested dismissal claims and provided advice on restructuring labour forces and the employment law framework of Jamaica.

Mr. Leiba is a member of the Social Affairs Committee of the Jamaican Bar Association and serves as Honorary Counsel to the Little Theatre Movement of Jamaica. He has served as a Director of the BTC Thrift Co-Operative Credit Union and on the Supervisory Committee of the GSB Cooperative Credit Union. He is a member and former President of the Jamdammers Running Club, a primary organizer of the internationally known Reggae Marathon and an avid runner and triathlete who has participated in several international events.

# Stimulating competition in the post-secondary education services market

By Lyndel McDonald

## BACKGROUND

**T**he post-secondary education services market plays an indispensable role in promoting sustainable economic growth. It facilitates the flow of critical information in a manner that leads to a more efficient allocation of scarce productive resources.

The flow of information by way of post-secondary institutions occurs at two distinct levels. At one level, post-secondary educational services transfer information/skills from qualified instructors to students. At the other level, certification issued by these institutions act as the primary means through which students, especially those without the requisite work experience, can convey credibly to a prospective employer the extent to which they possess the information/skills required to perform a given task.

Based on the sharp increase in complaints during the period 2009 through 2011, relative to the preceding three year period, the Fair Trading Commission (FTC) suspects that a key structural feature of the post-secondary education market may be unduly impeding competition; thereby depriving Jamaica of the potential benefits of this market. The aim of the FTC is to stimulate competition in this market by proposing measures to mitigate the adverse effects of impediments to competition.

## Overview of the post secondary educational sector

During the 2009/10 academic year, there were 1,021 public and 2,414 independent institutions offering various categories of educational services in Jamaica. Of the public institutions, 17 offered post-secondary education, in comparison to 111 independent institutions which competed in the same market.

## Complaints to the Fair Trading Commission

The FTC has over the years received many complaints regarding the quality of education and certification provided by private post-secondary, technical and vocational educational institutions. Complaints received allege false or misleading representations regarding:

- registration status with local or overseas entities;
- accreditation status by local or overseas entities;
- partnerships with local or overseas entities;
- unclear refund policies;
- resources and facilities offered; and
- course materials and teachers with appropriate training.

A major area of concern relates to accreditation. Students alleged that the schools falsely represented that several courses or programmes on offer were accredited. In some of these cases the Staff confirmed that the claims made were other than factual. Another major issue complained about concerned allegations that the institutions provided unqualified and incompetent lecturers for various courses or programmes.

## COMPETITION AND CONSUMER ISSUES

The previous section suggests that inadequate information on the part of students, regarding the quality of instruction offered and/or the value of certification issued by various tertiary educational institutions, is an important issue impeding competition. Students are inadequately informed because of misleading representations on the part of a tertiary educational institution as well as their failure to acquire and understand the requisite information.

The processes of registration and accreditation are geared toward screening the quality of tertiary education institutions. Students who enroll in a tertiary education institution which has successfully completed the processes of accreditation are less likely to be inadequately informed about the quality of instruction offered or the value of certification issued by the institution. Indeed, most of the complaints lodged were against non-accredited institutions or were related to unaccredited courses and programmes. The number of complaints could be significantly reduced, therefore, if students are made aware of the significance of registration and accreditation.

## The role for registration and accreditation

A competitive environment provides sufficient incentives for suppliers to offer consumers affordable high quality goods and services. One of the crucial underpinnings of a competitive environment is that consumers are adequately informed about the relevant characteristics of the services available from various suppliers. In the absence of an informed consumer base, suppliers have inadequate incentives to offer affordable high quality services.

Students enroll in tertiary level educational institutions for at least two reasons: (i) to acquire skills in a specific discipline and (ii) to improve their chances of securing gainful employment. The excess demand for post-secondary education has stimulated the growth of this market by

encouraging new institutions to enter and incumbent institutions to expand their services.

It is clear that improvement to the welfare of students is inexorably linked to providing them with information which is more reliable than that which is provided by the respective institutions. The regulatory processes of registration and accreditation provide one such means. When examining institutions or programmes for accreditation, accreditation bodies usually consider among other things:- the quality of the students, staff, programmes, facilities, physical resources and student support services. It is widely agreed that accreditation is a system by which the “level of performance, integrity and quality” of institutions and programmes are officially recognized.

### **The value of accreditation**

The widely talked about purposes of accreditation are to attest to the educational quality of the institution or programme and the institutional integrity of the entity delivering the programme. The main benefits are as follows:

#### *Benefits to the Institutions*

The process allows institutions to perform self-evaluation and self-direction towards institutional and programme improvement. Accreditation enhances the reputation of an institution and its programmes and inspires confidence in the educational community, through public certification of acceptable institutional quality. Consequently, the institution is better positioned to expand its ability to market its services and programmes, and to partner with other institutions and professional bodies (local and international).

#### *Benefits to the Students*

Accreditation provides students with an assurance that the educational programme(s) of an institution have been found to be satisfactory and should therefore meet the needs of the student. An accredited programme provides (a) students with a prerequisite for entering a profession; (b) a basis for admission into further studies by both local and foreign educational institutions; (c) assistance in the transfer of credits between accredited institutions.

#### *Benefits to the Public*

To the general public, accreditation provides an assurance of external evaluation of the programme and a determination that there is conformity to general expectations. Additionally, it provides an identification of institutions and programmes, which have voluntarily undertaken and successfully completed explicit activities towards improving the quality of their offerings.

### **The dangers of enrolling in unaccredited programmes**

When a programme or course is accredited, the components and structure of it are usually finalized and agreed to be of a particular standard. Based on the issues raised in several complaints, it would appear that persons who enroll in unaccredited programmes are likely to face some challenges. Such persons may find that among other things:

- ♦ They are unable to obtain jobs since the certification is

deemed to be of no professional or public value, as is demonstrated by the case cited earlier in this report;

- ♦ They are unable to matriculate to other local or overseas universities, and are unable to transfer credits to accredited institutions for courses of identical content;
- ♦ Programmes may extend beyond the originally stated duration as the institutions seeks to improve the value of the programme as they compete with other tertiary accredited as well as non-accredited institutions;
- ♦ Lecturers or tutors may not have requisite qualifications and experience to satisfactorily impart the course material; and
- ♦ The institution may require additional tuition fees for the completion of the course or programme and components of the programmes may change at short notice.

### **CONCLUSION AND RECOMMENDATION**

The tertiary education market performs the crucial role of continuously training the next cohort of labor market participants and ensuring that students are matched with employment opportunities commensurate with their skills. It is clear that the institutions which have supplied these services no longer have the capacity to satisfy the burgeoning demand for tertiary education. The excess demand for tertiary education is partially being addressed by recent entrants. There seems to be a distinct danger that Jamaica is not realizing the potential benefits of this expanding market due to uncertainty regarding the quality of institutions which have only recently entered. Students may limit their exposure to, if not avoid, misleading representation on the part of educational institutions by seeking admission to only reputable institutions. An institution may have established a good reputation through either having an extensive history of providing high quality services or by virtue of successfully completing the formal processes of registration and accreditation. Accordingly, the FTC recommends that:

- ♦ The Ministry of Education engage in a public education campaign aimed at repeatedly sensitizing prospective students of tertiary level institutions to the purpose of registration and accreditation;
- ♦ All institutions offering post-secondary level education be required to disclose their accreditation status in any representation made to the public;
- ♦ All relevant pieces of legislation such as Education Act (1965) & Regulations (1973, 1980), National Council on Education Act (1993) and the University Council of Jamaica Act (1987), be reviewed and updated; so as to provide for the mandatory registration and reporting of all private tertiary institutions. ❖

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*Mr. Lyndel McDonald is a Research Officer at the Fair Trading Commission.*



# Competition - the recession proof environment for economic development

By Kevin Harriott

**R**ecent developments in the tourism industry suggest that the state is yet to either embrace the market as the best means of stimulating economic development.

The theme of this year's newsletter, **competition in a recovering economy**, betrays a revival of the longstanding important debate on the role of the state in organizing economic activities. In the earlier years, the debate centred on the virtues of market economies versus command economies. At one extreme, proponents of command economies argue that the state should exclusively direct economic activities. At the other extreme, proponents of market economies argue that the organization of the economy should be decentralized such that economic outcomes are determined through the uninhibited interaction of market participants rather than the dictates of the state.

It is safe to say that market economies are unarguably preferred to command economies since nations which adopt predominantly market-driven economies tend to outperform nations which rely on command economies. Further, "competition" stands out as the gold standard among the various forms of market structures. In recent times, however, the debate has subtly evolved to a discussion on whether competition continues to be the best means of guiding economic activities out of a protracted recession. The basis for such a discussion is unclear because if competition is accepted as the best means of utilizing scarce productive resources when there is an economic boom, how can it not continue to be best when there is an economic recession?

To demonstrate that the state is yet to fully embrace the market as a means for organizing economic activity, one need only consider recent developments in one of the most prolific earners of foreign exchange for Jamaica, the tourism industry. Specifically, toward the end of 2009 the United Kingdom (UK) implemented an Air Passenger Duty (APD) for passengers on flights originating in UK for final destinations outside of Europe. The APD effectively made it disproportionately more expensive for UK tourists to visit the Caribbean, relative to the costs of visiting other destinations such as the neighbouring USA.

The state's initial and subsequent response to this external shock is telling. In June 2009 with the implementation of the APD pending, the Jamaican state announced two policy responses designed to mitigate the perceived threat to tourist arrivals. Firstly, Jamaica indicated that it would lobby the UK authorities to relax if not eliminate the APD for Caribbean destinations. Secondly, Jamaica asserted that it would



increase marketing efforts to stimulate the demand for Jamaica's tourism product.

Two years after news of the APD, the state has shown no evidence that it revised its initial response to the potential threat to Jamaica's tourism product. Specifically, In December 2011, the Caribbean received word that its lobbying efforts had failed. Again, Jamaica reaffirmed its commitment to increase marketing efforts to counter the effects of the APD.

It seems reasonable to expect that an effective policy response to the APD would have been crafted only after the key drivers of demand for Jamaica's tourism product were identified through a scientific study. Further, the second policy response identified earlier would be appropriate only if the study concluded that (i) increasing marketing efforts over extant levels would stimulate demand for the Jamaican tourism product; and (ii) among all the determinants identified in the report, increased 'marketing' efforts was most effective means of stimulating demand.

An FTC empirical study into this very issue does not support such conclusions. A report documenting the findings of the study has been posted on the website of the Fair Trading Commission (FTC) since September 2009, two months prior to the implementation of the APD. One of the main findings reported in the FTC study is that although 'marketing' was a key driver in the tourism industry, increasing marketing efforts above the extant level was not the most effective means of stimulating demand for Jamaica's tourism product.

The study relied on the results of a survey published in 2008 by the World Economic Forum (WEF) which utilized a total of 71 indicators to rank the attractiveness of tourism products across 130 countries. From among the indicators used in the WEF survey, the FTC study identified a total of

*Continued on page 11*

# Competition policy *versus* industrial policy as an engine for economic growth

By Peter-John Gordon

**I**ndustrial policy is a nation's official strategic plan to influence sectorial development and hence the nation's portfolio of industries. It is aimed at stimulating specific activities. Competition law on the other hand is aimed at ensuring that the competitive playing field is level thereby allowing market forces to determine which economic activities prosper. Industrial policy can therefore conflict with competition law. It is possible for industrial policy to pick the same set of industries which would emerge from competition, however this is most unlikely.

To see the conflict between these two different approaches to economic growth, we must start by assessing how economic actors make decisions. We make a basic assumption that economic agents will do the best for

would like to buy, the price of that commodity will fall. As the price of that commodity falls its production will become less profitable, causing some resources to move away from its production. The price mechanism therefore moves resources to where people would like them to be to satisfy their consumption demands. The motivation for firms is not a nationalist or altruistic one, but rather, self-interest, their pursuit of maximum profits. Likewise, consumers in making their consumption choices are driven by their own self-interest, obtaining the maximum satisfaction which they can from their limited incomes – they are not prepared to buy Jamaican if this means that they will have to face higher prices. The higher the prices they face, the less commodities they can buy with their given incomes, and hence the worse off they will be.

*Competition law is aimed at ensuring that the playing field is level for all players ...*

themselves which they can. A businessperson is primarily concerned with maximizing her profits. The industry which this businessperson is involved with is simply the vehicle used to attain the end result of profit maximization. What this means is that a businessperson involved in manufacturing is not in manufacturing because she loves manufacturing but because manufacturing is the pathway to her obtaining her objective of maximizing profits. If she can make a better rate of return in tourism than in manufacturing she will migrate from manufacturing to tourism. A consumer also tries to do the best he can for himself. This means that he will spend his limited income in a fashion that gives him the most satisfaction possible from this income.

Society is concerned with allocating its limited resources in the best possible way i.e. resources should flow to areas where consumers value them the most. In a free market it is the price mechanism which acts as the policeman directing resources to their best usages. If a commodity is in short supply i.e. if consumers would like to buy more of it than the supply available, its price will rise. Businesses see this increase in price and respond to it. An increase in the price of a commodity, all other things remaining constant, implies that the production of that commodity has become more profitable. Since businesspersons have no loyalty to what they make *per se*, but rather seek the highest profits which they can make, resources will flow towards making the commodity whose price has increased. Likewise, if there is a glut of a commodity i.e. the amount of the commodity which sellers would like to sell exceeds the amount which buyers

The discussion so far, has been static, i.e. the discourse has been conducted as if there was only one time period. Being more realistic, assume that there are two time periods, today and tomorrow. Assume further that firms make investment decisions today and realize the benefits of these investments tomorrow i.e. the firm builds its plan today and sells its products tomorrow. Whether the firm makes a profit or a loss is dependent on the prices which exist tomorrow when it takes its products to market, not the prices which existed today when it made the investment decisions. Today the firm guesses as to what the prices will be tomorrow. If it guesses right it is rewarded with profits, if it guesses wrong it makes losses; this is a part of the normal commercial risks involved in business.

Competition law is aimed at ensuring that the playing field is level for all players, that unfair advantages will not be given to one enterprise over another, whether that enterprise happens to be in the same industry or not. Competition law is aimed at reducing the noise which businesspersons must face when they seek to discern what the wishes of consumers are, not only today but what they are likely to be tomorrow.

Industrial policy seeks to identify the industries which should be allowed to flourish and by extension which industries should be allowed to die. The idea here is that if there is a concentrated effort at a few industries the likelihood of success would increase. This would be true, if production was an end in itself. However, production must be aimed at satisfying consumer wants. The architects of an industrial policy, social planners, must therefore guess what



the wants of consumers will be. If they guess right, resources will flow more quickly into these areas because industrial policy can make these areas relatively more profitable and by extension other areas relatively less profitable. What happens if the planners choose the 'wrong' areas?

If a private businessperson chooses the 'wrong' area to invest in, she loses her investment and goes out of business, with hardly any effect on other businesses. If the industrial policy chooses the 'wrong industries', it will cause the country's resources to flow into areas which are not wanted by consumers, at home or abroad. The country's rate of growth and employment levels will therefore be much lower than if resources flowed to the 'right areas'. The planners do not have perfect foresight i.e. they cannot tell with certainty what people will want in the future. They are no better at predicting the future than anyone else. When an individual businessperson guesses about the future she risks her own money and therefore she has a great incentive to be prudent. The social planner has no such personal stake and therefore stands to lose much less of his personal wealth; we cannot therefore expect the social planner to exercise as much due diligence as a private businessperson. Suppose that today was 1980 and tomorrow 1990 and the product was typewriters. In the 1980s the prospect of typewriters was fairly robust, hence an industrial policy could have encouraged the production of typewriters, however such businesses would have failed in the 1990s simply because consumer taste and preferences changed in response to innovations.

Industrial policy recognizes that businesspersons are driven by the profit motive and take this as given. It seeks to manipulate the relative profits between various industries by government actions i.e. by the granting of subsidies and taxation policy. The favoured sectors are given subsidies, tax concessions and/or tariff protection among other measures.

These make these areas relatively more profitable than sectors which do not receive such benefits. Resources will therefore flow into the preferred areas and away from other areas. It is very likely that sectors which are not preferred today by planners are among the sectors which consumers will demand tomorrow i.e. growth areas. The development of these sectors would be discouraged by industrial policy.

Consumers are encouraged to buy from the preferred sectors, even if this would not be their desires, by the manipulation of relative prices. High tariffs on imports will discourage consumers from buying imports, instead encouraging 'buy Jamaican'. This is done however only by making the consumer poorer, since higher prices translate into lower real incomes.

Some persons will argue that other countries 'protect' certain sectors and so we should do the same. There are two things to note in response to this assertion. Firstly, 'protection' in the case of a small open economy like Jamaica does not mean a transfer of resources from foreign producers to local ones, but rather a transfer of resources from Jamaican consumers to Jamaican producers i.e. one segment of the Jamaican society is made poorer so that another can be made more wealthy. Secondly, the wealthier a society is the more room it has to absorb 'bad' economic policy. It would be a mistake to think that these wealthy societies are rich because they pursued these bad policies, rather than that they are rich in spite of these policies.

The probability that industrial policy will get it 'wrong' is much greater than the probability that it will get it 'right'. Competition law is a much safer bet that society's resources will be used in the best possible way, that citizens will be wealthier and consumers happier.✚

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*Dr. Peter-John Gordon is a Lecturer at the University of the West Indies and a former Chairman of the Fair Trading Commission.*

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## Competition - the recession proof environment for economic development

*Continued from page 9*

42 tourism drivers, i.e. indicators in which higher ranking countries in the Latin America and Caribbean region outperformed the lower ranking countries in the region.

This result is very important for policy analysis as it suggests that policymakers have an arsenal of at least 42 policy instruments with which they could craft a response to mitigate the effects of the APD. The study ranked the drivers based on their respective impact on the competitiveness index of a country's tourism product. Another important result of the study is that 'the effectiveness of marketing and branding' was ranked 32<sup>nd</sup> among the 42 identified drivers of tourism competitiveness. In other words, the study concluded that there are at least 31 policy instruments which

are potentially more effective than 'advertising' as a means of mitigating the effect of the APD.

While the Jamaican state is far removed from the economic policies usually associated with command economies, recent developments in the tourism industry demonstrate that the state is yet to (i) fully trust the market to engineer socially desirable economic outcomes, or (ii) appreciate the potential for the state to exploit the market to engineer socially desirable economic outcomes.✚

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*Dr. Kevin Harriott is the Competition Bureau Chief at the Fair Trading Commission.*

# The prospects for sustainable growth within the tourism sector



**T**he tourism industry in Jamaica, which had its origins in the early parts of the last century, assumed the role of the leading export industry after the downturn in local agriculture industry. Over the years, the tourism industry grew to become a pillar of the Jamaican economy and a critical player in the development process. Tourism now accounts for 7.3% of GDP, 7.3% of direct employment and almost 50% of export earnings.

The principal determinants of growth in the tourism sector are predicated by the state of source markets, accommodation capacity, the visitor experience, airlift capacity and the impact of advertising and promotion. Effective marketing and efforts at maintaining airlift were cited in National Income and Product 2009 (STATIN publication) as significant factors influencing tourism performance. The key indicators that are linked to Jamaica's performance were identified as: visitor arrivals, hotel occupancy and visitor expenditure. A direct result of these critical indicators performing well can be seen in the ratio of jobs to hotel rooms within the sector. The country's current room stock is in excess of thirty thousand (30,000) rooms and it has been estimated that each hotel room generates an average of direct 1.35 jobs.

The tourism industry also has extensive linkages with other sectors of the domestic economy. Based on the National Income and Product Accounts, Tourism Direct Gross Value Added as a share of Industry Gross Value

Added was significant for Food and Beverage services, Passenger Transport Services, Transport Equipment Rental and Recreational Cultural and Sporting activities. This means that the positive effects of the tourism industry are being felt, not only by the subsector groups but also by entities along the supply and demand side of the Jamaica economy.

Jamaica maintains its position as an extremely competitive tourist destination through effective marketing as well as a good tourism infrastructure and services, including: new air services to Europe and North America, newly upgraded international airports, a new historic pier for cruise ships in Falmouth Trelawny, 1000 new hotel rooms and a new 50,000 sq. ft. \$350 million Convention Centre in Montego Bay. This helped the island's tourism industry to withstand the devastating effects of the turbulent global economic climate and the destination to maintain its rank as the number one English-speaking destination in the Caribbean.

Despite the challenges for the 2009/2010 period Jamaica's tourism was the only sector to have reported growth for the 2010 period where it recorded a 4.7% growth in tourist arrivals, a 1.1% increase over the corresponding period of 2009 – (3.6%). Total stopover arrivals to Jamaica maintained a steady increase and rose to (1,920,102) in 2010 over (1,831,097) in 2009; this accounted for a 4.9% change between 2009 and 2010. With an optimistic outlook for stopover arrivals for the 2011 period, Jamaica is expected to grow by some 6.5% to (2,045,102). This would be a major milestone for Jamaica, representing the first time in the



country's history where stopover arrivals surpassed the two million mark while simultaneously realizing earnings of over US\$2 billion.

The *Master Plan for Sustainable Tourism Development (2002-2012)* created the overarching framework for sustainable tourism development which is in keeping with local, regional and international trends and realities. The *Master Plan* represented the Government's recognition of the ability of tourism to secure greater prosperity for the present and future generations as well as championing the thrust for sustainability of the environmental quality, economic growth and social well being. Based on recommendations of the *Master Plan* the Ministry was able to explore the opening of niche markets through community-based tourism, Jamaica Bed & Breakfast/Home Stay Programme, spear-heading of the Inter-American Institute for Cooperation on Agriculture OAS/IICA Agro-tourism Project, Policies for Recreational Use of Rivers, Legislative review of the Tourist Board Act, Proposed Water Sports policy, the support and promotion of local culture and heritage via technical, promotion and logistical support of festivals and the cultural industries.

The Ministry of Tourism continues to create policies and legislation to stimulate the sustainable growth, development and competitiveness of the Tourism sector. The thrust of Government's Tourism Policies for 2010 were aimed at reducing the impact of the global recession, maintaining and increasing market share (Maintaining/increasing visitor arrivals and airlift capacity; improving and diversifying the tourism product; and enhancing the visitor experience); providing a policy and service framework so as to foster investment, inclusiveness and growth and facilitating and sustaining environmental management. These objectives are aimed at allowing Jamaica to realize record levels of total visitor arrivals and expenditure by 2015.

The Ministry is committed to the granting of incentives to the tourism sector to stimulate growth, competition and sustainable development. Since April 2006, approximately (9) hotels have received incentives under the Hotel Incentive Act. Seven (7) have been granted Approved Hotel Status for 10 years, and two (2), Convention Status for 15 years. Of the nine properties six (6) are owned by Jamaicans, two (2) Spanish and one (1) American. The properties are located in four (4) of the six (6) resort areas: - Montego Bay, Negril, Ocho Rios and Port Antonio. Four (4) of the properties represented new hotels: The Palmyra Resort & Spa, Grand Palladium, Lady Hamilton Hotel (Convention Status), Rooms Hotels and Bay Villas. Three (3) represented hotels under going expansion: -Goldeneye, Tryall Gold & Country Club and Breezes Runaway Bay. At present the tourism industry is the beneficiary of a number of incentives and concessions that are designed to encourage investment in the sector and to allow all tourism entities to upgrade their facilities so as to remain competitive in the marketplace.

For the period January 2010 to December 2010 the following incentives were granted to accommodation, attraction and ground transport sectors:

- ♦ Under the *Hotel Incentives Act (HIA)*: Seven (7) hotels representing seventy three (73) new rooms with a projected capital investment of approximately JA\$ 15 billion and expected employment of 79 persons.
- ♦ Under the *Resort Cottage Incentives (RCIA)*: Two (2) properties representing 18 new rooms with projected capital of JA\$ 159 million and expected employment of approximately 18 persons
- ♦ Under the Attractions Incentives: Ten (10) attractions received incentives under the Attractions Programme, Eight (8) represented new attractions while two (2) represented existing attractions with a projected capital investment of JA\$1.02 billion and additional employment of 473 persons. The sub-sector now benefit by importing specific items free of GCT and Custom Duty for five years. Investors in attracts are also granted up to a maximum of five (5) years exemption from corporate taxes.
- ♦ The Ground Transportation Sub-Sector received concessions for approximately 861 motor vehicles. Under the new policy (May 2011) Car rental companies are granted concession – 0% GCT on vehicles below 2.0 cc.

The Ministry has also partnered with various private sector entities to provide assistance to players within the tourism industry who may need assistance is sourcing requisite funding to undertake expansion or renovation of their properties. The Tourism Enhancement Fund (TEF) in collaboration with Jamaica National Building Society Small Business Loan Programme has agreed to make available an additional amount of One Hundred Million Dollars (JA\$100,000,000.00) under the Loan Programme, on a revolving basis, to be issued to individuals or companies operating businesses within the tourism sector. Under this agreement the maximum loan amount to each borrower will be Five Million Dollars (\$5,000,000.00) repayable over a maximum period of sixty (60) months at an interest rate of five percent per annum. The Ministry of Tourism has also had discussions with the Inter-American Development Bank with the aim of securing a loan which would provide access to up to US\$10 million in funding through the Inter American Investment Corporation, to assist small hotels and medium-sized businesses that supply goods and services to the country's tourism sector.

The Government of Jamaica, through the Ministry of Tourism and its agencies continue to provide support and the facilitative fiscal and financial policies for tourism. With the incentives offered to the industry, training, promotion and planning and other services, as well as infrastructural developments the sustainable tourism development will continue to be stimulated.✚

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*Article contributed by the Ministry of Tourism.*

# Competition and economic growth: *is there a link?*

By Densil Williams

## Introduction

**M**odern economies in the current hostile global environment that are seeking to grow and improve the standard of living of their citizens will have to strengthen their international competitiveness. This is especially true for small, open economies like Jamaica and its Caribbean neighbours that are so intricately linked into the global economy. Because of their small size, the countries in the Caribbean cannot depend on internal markets and industry to drive growth. They will have to trade in the global economy to produce at competitive levels of cost and efficiency. This is because small size will limit their ability to gain economies of scale in production and distribution. The big question that policy makers grapple with, therefore, is: How to improve the international competitiveness of local economies in an inhospitable global economic environment? The correct response to this question is the key to economy recovering and the generation of economic growth in an inhospitable global environment.

## Better understanding of competitiveness needed

However, if policy makers are to deal decisively with the issue of improving the competitiveness of their location, they will have to first understand the meaning of the concept. Too often, the discourse around competitiveness is narrowed down to economic competitiveness *viz a viz* the exchange rate, the interest rate etc. This however, is a highly misleading notion of the concept. Competitiveness really narrows down to improve productivity over time. Therefore, to understand competitiveness, one has to better understand the drivers of productivity in an economy. A very good conceptual understanding of these drivers is found in Porter's diamond model of economic competitiveness.

The model basically argues that the competitiveness of an economy is driven by some key factors all working together simultaneously. These variables are labeled factor conditions which look at the inputs into the production process. They may include human resources, physical infrastructure etc. There is also demand conditions; another important variable which basically looks at the quality of the buyers in the market. How demanding are consumers in terms of the quality of products and services that they buy. Also, there is the other elements of the diamond model such as firm strategy structure and rivalry and, related and supporting industries. Related and supporting industries look at how industries link or cluster in order to improve productivity while firm strategy structure and rivalry speaks to how industries are organized in order to facilitate competition. It



is this part of the diamond (strategy structure and rivalry) that is most critical to drive competition and innovation to help drive economic growth.

## Competition and growth

Competition will drive economic growth through the moderating role of innovation. Innovation is what drives efficiency and thus business productivity. For innovation and efficiency to occur, there needs to be as minimum impediments as possible from national governments to business activity, by way of interventions in the markets. Indeed, the world economic forum 2010-2011 Global Competitiveness Report noted that competitiveness is hindered by distortionary taxes or restrictive and discriminatory rules on investments from abroad (Foreign Direct Investments- FDI) by limiting ownership structure. Critically also, there must be as minimum impediments to international trade as possible. Conditions that facilitate domestic and international competition will lead to greater innovation and efficiency and higher productivity in businesses and by extension, the wider economy.

## Linking the numbers

A scan of the data on competitiveness of economies shows that there is a close link between levels of competition in the domestic market; that is, the effectiveness of anti-trust legislation and innovation. Innovation is the mechanism through which competition drives growth.

Barbados, the best performing economy in the Caribbean region in terms of its international competitiveness in 2011,



ranked 69 of 139 countries in terms of effectiveness of anti-monopoly policy while its capacity for innovation was ranked at 93. Comparable data showed that less competitive economies like the Dominican Republic had rankings of 120 for effectiveness of anti-monopoly policy and 121 for capacity innovation. Its competitiveness score was 101 for 2011 while that of Barbados was 43 for the same period. For Jamaica, the data showed a ranking of 62 for effectiveness of anti-monopoly policy while capacity for innovation was ranked at 107. Jamaica's competitiveness stood at 95 in 2011 a rapid decline from 86 in 2009. Indeed, the data show that countries that achieve high levels of competitiveness are also the ones that are rated highly in terms of competition (i.e. effectiveness of anti-monopoly policy) and levels of innovation.

Economies that experience very strong growth and high levels of international competitiveness enjoy high levels of competition and innovation. Policies that hinder competition will eventually lead to lower growth, as protectionism will lead to reduction in aggregate demand in the economy. Healthy competition both in the domestic and foreign market is critical for driving innovation and efficiency in the markets. This will no doubt lead to greater productivity because the most innovative and efficient firms are the ones that will eventually thrive. With a substantial amount of these firms thriving in an economy, the result will be robust economic growth. Factors that prevent

competition will restrict innovation and efficiency and thus hinder economic growth and recovery.

### Concluding thought

There is no doubt that competition is central to economic growth as it is one of the most important pillars that will drive innovation. Innovation and business sophistication is key to developing an economy that is highly competitive and can compete in an increasingly globalized world economy. Business sophistication speaks to the quality of a country's business networks and also the quality of the firm's operations and strategies. These are other important aspects of a country's diamond that need to be strengthened in order to improve the competitiveness of the country which will enable it to compete in a global environment and can generate growth.

Indeed, central to a country strengthening its diamond is the role of competition. Competition will facilitate high quality human resources, high quality demand for goods and services, high quality business networks and robust business strategies. Effective anti-trust policies will be critical in driving competition and helping countries to improve their diamond of national competitiveness if they are to recover from economic adversities and derive economic growth.✚

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# Reviving the bauxite and alumina industry



*This analysis examines the revival of the Jamaican bauxite and alumina industry by first discussing the global downturn that buffeted it. It identifies some lessons worth learning and presents the revival initiatives already undertaken. It concludes with a set of revival measures currently being considered and singles out the prospect of muted growth in major segments of the global economy as a likely risk to the revival process.*

By Philip S. Baker

## The downturn in the global industry

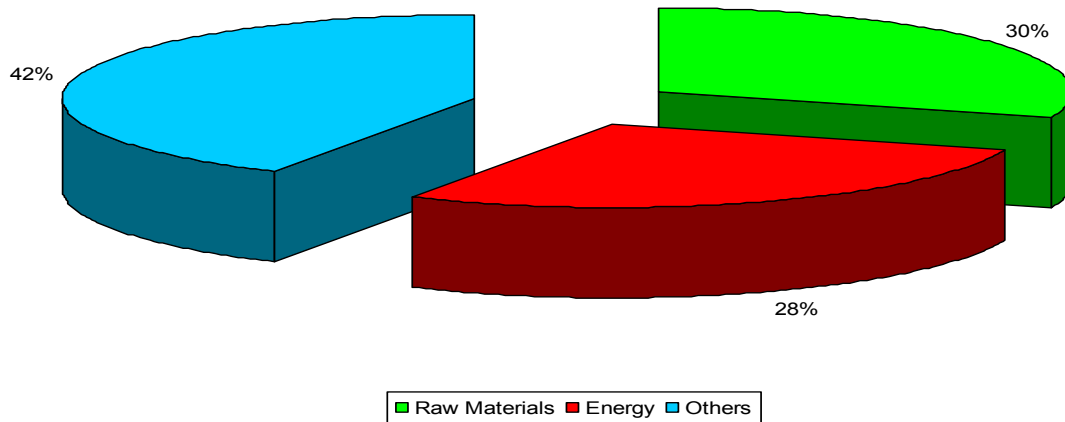
Following the Global Financial Crisis of 2008 there was an attendant fall in demand for aluminium-based products from major end use customers in the construction, automotive, aerospace and packaging industries. This forced the global bauxite, alumina and aluminium industry to adopt surgical cost reduction measures resulting in the retrenchment of uncompetitive capacity in some regions of the world. In particular, global primary aluminium production fell from 40.1 million metric tonnes in 2008 to 37.7 million metric tonnes in 2009. Of this, roughly 38% (or 0.9 million metric tonnes) originated in the United States. A further 15% (or 0.4 million metric tonnes) reduction occurred in Russia and an additional 10% (or 0.3 million metric tonnes) was slashed in Norway. Within this context, global metal grade alumina prices collapsed from a high of US\$435 per tonne in June 2008 to a low of US\$170 per tonne in January 2009. This effectively induced some aluminium smelters to opt to procure their alumina requirements on the spot market at these depressed prices instead of producing it in uncompetitive affiliated refineries. In these circumstances global alumina production slumped from 79 million metric tonnes in 2008 to 73.8 million metric tonnes in 2009, reflecting a 47% (or 2.4 million metric tonnes) reduction in Latin America and a 34% (or 1.8 million metric tonnes) capacity downsizing in Europe. With the precipitous decline in alumina prices, some 67% of Jamaican

alumina capacity was rendered revenue-negative from around the fourth quarter (Q4) of 2008. This largely due to their positioning at the higher end of the international cash cost of production curve. As the multinational owners sought to bring global production into closer alignment with the prevailing diminished market demand, some 2.9 million metric tonnes (or roughly 66%) of Jamaican alumina capacity (notably at the Ewarton, Kirkvine and Alpart refineries) were curtailed, with an associated loss of highly skilled workers and well-paid jobs.

## Lessons worth learning

An important lesson worth learning is that episodes of retrenchment (some more protracted than others) are inherent features of the global industry's business cycle. Also, it is to be recognised that being revenue-positive (which is a function of a refinery's positioning on the global industry cash cost of production curve) is a critical determinant of long-term survival. As such, it is absolutely necessary to continuously tweak the industry's business model so as to insulate it from the ravaging effects of these cyclical downturns. More specifically, there is the urgent need to embed disciplined cost structure management and efficient resource utilisation (including the efficiency of labour) into our business processes. It is therefore with this in mind that we now turn to Chart 1 which is based on data from CRU Analysis. It shows that energy is a significant element of the

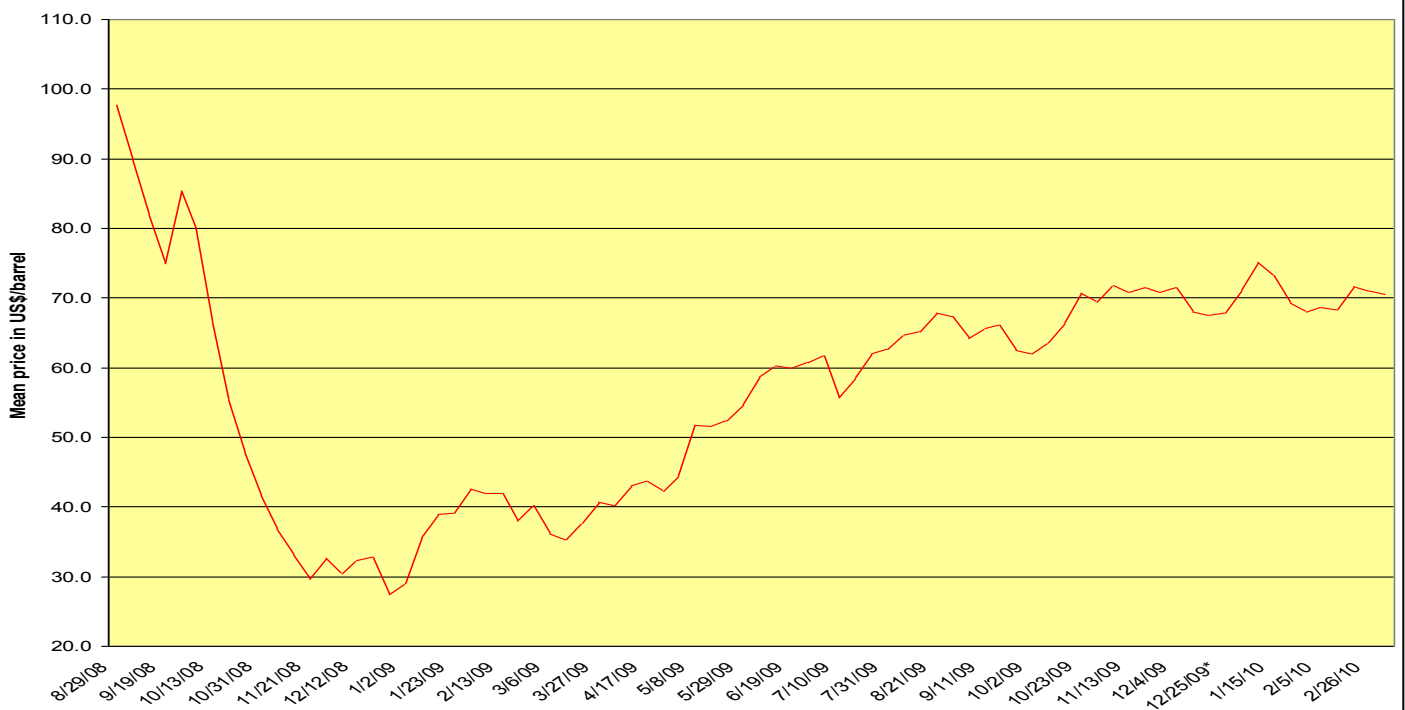
**Chart 1. Alumina Refining: 2009 Cost Structure**



alumina industry cost structure, accounting for 28% in 2009. This is further amplified by the fact that, under normal conditions, the Jamaican alumina industry consumes roughly 10 million barrels of oil equivalent (predominantly Heavy Fuel Oil) in a given year. Indeed, Chart 2 illustrates the level of price volatility of Heavy Fuel Oil (HFO) as it flirted with a peak of US\$100 per barrel in August 2008, plummeted to a trough of just under US\$30 in February 2009 before rebounding to about US\$70 in June 2010. Considering that on average the Jamaican industry consumes approximately 2 barrels of HFO in producing a metric tonne of alumina, it means that at prices that prevailed in June 2010 fuel

accounted for just about US\$140 of the total cash cost of producing a tonne of alumina. With the alumina spot price in June 2010 being US\$320 per tonne, the cost of raw materials and other inputs would have had to have amounted to less than US\$180 per tonne for the Jamaican operations to have been revenue positive. In June 2010 it was determined by UCRusal (majority owners of the Windalco operations) that the Ewarton refinery – after factoring in an adjustment to the fiscal regime structure – could become revenue positive in the existing market conditions. Accordingly, the plant was reopened on July 1, 2010. However, the Kirkvine and Alpart refineries have so far not been able to satisfy the revenue

**Chart 2. Mean USG HFO (3.0% Sulphur) prices: 29/8/2008 - 2/26/10**





positive criterion and as a consequence remain closed.

### **Revival initiatives already undertaken**

In the interest of enhancing the local industry's underlying economics, some key revival initiatives have already been undertaken. Essentially, they revolve around reviewing the fiscal regime structure, determining the quality of available bauxite reserves and diversifying the energy mix to include natural gas. In this regard, the Ministry of Energy and Mining (MEM) and the Jamaica Bauxite Institute (JBI) responded to clear evidence of the Ewarton refinery's unfavourable positioning on the global industry cash cost of production curve by adjusting the fiscal regime structure. This was to improve the prospect of resuming operations on a sustainable basis. In addition, the JBI is spearheading field exploration drilling and sample gathering and characterisation to assess the processability of available bauxite reserves in key mining leases. Also, a concerted effort has been made to engage all the relevant industry stakeholders regarding the capital investment required to retrofit their powerhouses to burn natural gas consequent on the build out of a Floating Storage and Regasification Unit (FSRU) by 2014.

### **Revival measures being considered**

Besides the revival initiatives already undertaken, several other measures are receiving urgent consideration. However, owing to the very sensitive nature of ongoing deliberations, it is prudent at this juncture to simply list them. They include:

- ♦ Inaugurate the processability testing component of a comprehensive research exercise aimed at cost effectively controlling the levels of goethite and phosphorus found in some of the remaining Jamaican bauxite reserves;
- ♦ Enhance the industry's capital intensity by boosting the capital stock at each plant to amplify worker productivity and the efficiency of resource utilisation;
- ♦ Collaborate with existing local players and prospective investors to plan brownfield expansion and build new capacity around the use of cheaper, more efficient and cleaner-burning fuels;
- ♦ Remove existing barriers to adopting the principles of sequential land use as a necessary safeguard against the sterilisation of valuable bauxite reserves;
- ♦ Locate, protect and allocate a steady stream of bauxite reserves in economically mineable blocks in order to sustain production at targeted levels over a 30-year time horizon; and
- ♦ Explore the prospects of extracting value added products from bauxite tailings stored in mud holding ponds.

### **A likely risk to the revival process**

In our estimation there is the likelihood of muted growth becoming a feature of major segments of the global economy within the near to medium term. This poses a risk to the revival process. Why? Because the global aluminium market

as well as the Jamaican bauxite and alumina industry take their cue largely from the state of economic health of the US, the EU27 and Asia. Indeed, data from Eurostat signal the early stages of a synchronised slowdown in all three major economic blocs. In particular, US GDP has slumped to 0.3% in the second quarter (Q2) of 2011 from 0.9% in the corresponding period of 2010. This reflects the country's very substantial debt overhang, a stubbornly high unemployment rate of 9.1% and the parlous state of the residential and commercial construction sectors. Then there is the wrenching balance sheet rebuilding being orchestrated by consumers as well as corporations. Meanwhile, the EU27 has seen its rate of GDP growth slip to 0.2% in Q2 of 2011 compared to 1.0% a year earlier. This comes amid heightening concerns that recent fiscal tightening coupled with unfavourable debt dynamics will serve to decelerate the pace of economic growth in the period ahead. In the meantime, in the aftermath of the very devastating earthquake and tsunami that occurred in March 2011, the Japanese economy continues to languish. This is evidenced by a 0.3% decline in GDP in Q2 of 2011 against -0.1% in the comparable period of 2010. It must be acknowledged, though, that with reconstruction efforts well underway, things could improve somewhat. That having been said, it remains rather doubtful that the country will soon emerge from the low growth-low inflation cycle in which it has been mired for a decade. Elsewhere in Asia, the outlook is fraught with considerable risks to the downside.

Against this background, the global aluminium market, much like the global economy, faces several headwinds. These include the slow grind of bringing inventory levels on the London Metal Exchange (LME) down to the 1.3 million metric tonnes recorded in September 2008 from the current level of roughly 4.4 million metric tonnes, where they have remained stuck for 2 years. The LME 3-month aluminium price, meanwhile, has regained some of the ground lost in 2009 but at the current level of US\$2,339 per tonne is still below the over US\$3,000 per tonne registered on July 11, 2008.

For these reasons and in the absence of any disruption due to acts of God or industrial unrest, the Jamaican bauxite and alumina industry is poised for a steady ramp up of production at the Ewarton plant to the rate of 650,000 tonnes per annum commencing in early 2012. However, the time horizon for a restart of the Kirkvine refinery could extend into the fourth quarter (Q4) of 2011. In the case of Alpart, the timeframe for a sustainable restart appears to be far more uncertain. This is due to a considerable degree to UCRusal's financial challenges, Hydro's repositioning in Brazil, the time required to inaugurate a cost effective energy solution and the likelihood of muted global economic growth.✚

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# Emerging from the Global Downturn

## *Promoting growth through trade & investment*

By Nakeeta Nembhard

### Background

During the fiscal period 2010/2011, Jamaica achieved a number of milestones which served as early indications that the country was poised to make significant strides toward economic recovery. One such milestone was the Jamaica Debt Exchange (JDX) which effectively created an opportunity to identify new investment vehicles other than 'government paper'. Other significant achievements were overall reduction in crime as well as the steady reduction in interest rates by the commercial banks, which had arguably set the stage for increased access to credit for the business community. Non-traditional exports, in particular food exports (baked products, fresh produce, sauces, alcoholic and non-alcoholic beverages) grew by 11.7% for the period January to August 2010.

These achievements have enabled a renewed thrust to identify creative ways to leverage Jamaica's competitive advantages in the achievement of key economic objectives. Such efforts come at a particularly opportune time as competitors in the main sectors of focus have also sought to revamp their own strategies to attract investment and stimulate trade in a global business environment, which though improving, is still characterized by reserved investor strategies.

### Global economic climate

In 2010, Foreign Direct Investment (FDI) inflows were twenty-five percent (25%) less than pre-crisis levels. It was estimated that the level of FDI inflows in 2011 would fall in the range of US\$1.3-1.5 trillion, rising in 2012 to US\$1.6 trillion and US\$2 trillion.<sup>1</sup> Such projections have contributed to increasingly aggressive targeting and marketing efforts being undertaken by countries against the background of:

- ♦ Increasing liberalization of investment regimes<sup>2</sup>
- ♦ Investor-preference for brownfield as opposed to greenfield investments<sup>3</sup>
- ♦ Greater reliance on private investment flows

United Nation Conference on Trade and Development (UNCTAD) notes that "the overall trend toward attracting more foreign investment can enhance economic recovery in the aftermath of the financial crisis particularly... when public investment has run out of steam in many countries..."<sup>4</sup> Global prospects for foreign investment are improving with increased optimism among transnational corporations (TNCs) evidenced by a reduction in the number of TNCs expressing negative views on the business and investment environment.<sup>5</sup> In recognition of this and the imperative to differentiate the Jamaican offering in such a climate, there has been increased focus on improving the local business environment along with marketing opportunities within sectors possessing the potential to realize significant growth in the short to medium-term.

### Strategies for enhanced competitiveness

#### *Investment*

Sectors such as information communication technology (ICT), tourism, manufacturing and the creative industries continue to demonstrate strong growth potential, offering diversified opportunities to increase inward FDI and local investment flows, create employment and expand linkage opportunities. Additionally, new niche areas within major sectors are being explored to further develop and diversify Jamaica's suite of investment opportunities- among these are health and wellness tourism, business process outsourcing (BPO) and contract manufacturing.

Using the former two industries as an example of the significant work being undertaken to further develop supportive frameworks for the sectors of focus:

**Health & Wellness Tourism** - Health & Wellness Tourism has been identified as one of the new growth areas for Jamaica. One key segment of the sector is medical tourism, which refers specifically to medical treatment of foreigners and locals, diagnosis of samples, and imagery for foreign hospitals and healthcare providers. As the average medical tourist (in general) spends some



four or five times more than the typical tourist, Jamaica stands to significantly benefit from foreign exchange earnings. Based on the strong value proposition offered by health and wellness tourism, work is currently being done in partnership with a number of key stakeholders in order to develop a comprehensive policy framework for the industry.

**BPO** - Jamaica's offshore BPO industry currently offers services along the lower-end to the mid-range of the outsourcing services value chain, ranging from back office, customer service support and debt collection to finance & accounting, IT and some software development. Work is being undertaken to build capacity, especially in the labour market, to position Jamaica to move up along the value chain into the Knowledge Processes Outsourcing (KPO), e.g. research services and content development.

The development of new strategies along with the improvement of existing ones in the marketing of such opportunities is guided by the need to recognize greater gains with less resources through cutting-edge methods. This becomes even more critical as countries with similar sectors of focus are competing with Jamaica for the same reduced pool of funds. In-keeping with this, efforts are currently underway to enhance packaging of investment opportunities through more in-depth research to provide more comprehensive information to prospective investors.

Additionally, further engagement and leveraging of key stakeholders both locally and in overseas markets has increased in an effort to expand access to networks within target markets and facilitate development of respective sectors. Such thrusts have yielded initiatives such as the appointment of an ICT Ambassador/Special Envoy who will serve to assist in the refinement and execution of the promotion strategy for the ICT sector that will ultimately result in the country landing more investments.

#### *Trade*

The steady fall in commercial bank interest rates has allowed for increased access to credit and finance for the local business community, thus empowering local companies to increase both their export and investment ventures.

Export of non-traditional goods has performed consistently with approximately J\$12.5 billion<sup>6</sup> generated in sales for the past three fiscal years. To maintain and enhance this performance JAMPRO has undertaken new initiatives such

as its Export Max programme which seeks to target an initial group of fifteen (15) Jamaican exporters and export-ready firms within priority sectors under the National Export Strategy (NES)<sup>7</sup>, with strong potential but which lack the required resources to take full advantage of the export market.

Further development and leveraging of Brand Jamaica in marketing strategies will serve to further differentiate Jamaican products from similar items produced by competitors. This is the over-arching principle guiding promotional strategies for exports such as those implemented for major international trade shows in which Jamaica participates e.g. the America's Food and Beverage Show and the Summer and Winter Fancy Food Shows.

#### *Improving the Business Environment*

A key area for the success of both trade and investment is the business friendliness or the investment climate of the country. Jamaica currently ranks 81 out of 183 countries in the Doing Business Report 2011. With six consecutive years of decline in this ranking, increased attention has been given to the particular areas in which improvement is most needed through the efforts of the National Competitiveness Council which is chaired by the Minister of Industry, Investment & Commerce. Significant improvements have already been realised in the areas paying taxes and starting a business with plans underway to address major areas of concern such as bureaucracy.

#### **Concluding remarks**

The continued success of developing countries and emerging markets presents further opportunities for the expansion of the marketing thrust of previous fiscal years. With projections for slow yet steady recovery in the global economy, increased investor confidence along with more effective marketing strategies, the prospects for economic growth are expanding due to efforts at diversifying and developing Jamaican business opportunities. Employment of comprehensive strategies to achieve economic growth, particularly as it relates to the business environment, is key to ideally position Jamaica to further develop and strengthen its position in the global economic landscape.✚

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#### *Endnotes*

<sup>1</sup>As noted in the World Investment Prospects Survey 2010-2012 published by UNCTAD (2010)

<sup>2</sup>UNCTAD (2010) reported that between April-October 2010, many countries adopted more liberal investment facilitation and promotion measures, all geared to attracting the relatively limited amount of FDI inflows.

<sup>3</sup>The challenge of limited capital hindered prospective and existing investors from embarking on greenfield projects, with most interests being in brownfield opportunities.

<sup>4</sup>Investment Policy Monitor No. 2, 7 October 2010 published by UNCTAD.

<sup>5</sup>Based on figures reported in the World Investment Prospects Survey 2010-2012 published by UNCTAD (2010).

<sup>6</sup>Based on information collected by JAMPRO.

<sup>7</sup>The priority areas are: agro processing; aquaculture; furniture; coffee; fashion; mineral and mining; ICT; entertainment; and education.

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# A Tale of Competition - Recession and Recovery

*“It was the best of times, it was the worst of times...it was the spring of hope, it was the winter of despair...we had everything before us, we had nothing before us...”*

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By Wendy M. Duncan

Charles Dickens, the great English novelist of the nineteenth century, may not have dreamed that his words could reach forward more than two hundred years to be applied to a huge global recession affecting economic giants such as the United States of America, Europe and Japan; as well as to economic midgets such as Jamaica. The global recession, which officially ended in 2008, has been described as “...the worst financial collapse since the 1930’s”.<sup>1</sup> The world should now be relieved - even elated - and filled with hope for recovery and renewal. Instead, fear lingers as nations teeter on the brink of another possible economic downturn – a “double-dip recession”.<sup>2</sup> The novelist’s words ring true, it is indeed a time of contradictions.

Jamaica’s print media has voiced some of the challenges faced by the country during the recession. One report stated:

*“Consumption pattern data provided by the Planning Institute of Jamaica and the Statistical Institute of Jamaica indicate a reduction in household expenditure across nearly all areas since 2008. The data suggest further that there has been significant belt-tightening in households, especially in rural townships, as residents grapple with less-available cash as a global recession ravaged incomes worldwide”.<sup>3</sup>*

Another statement was, *“As the local economy struggles under the weight of rising food, electricity and other costs, Jamaican families across all socio-economic groups have entered into survival mode”*. On May 10, 2011, however, Jamaica’s then Prime Minister, Bruce Golding, announced in Parliament during his contribution to the 2011 to 2012 Budget Debate that Jamaica was *“...officially out of the recession, as in the January to March quarter the economy registered modest to positive growth”*.<sup>4</sup> At last, our economy is said to be on the road to recovery. This discussion will focus on the role of competition law and policy in the economy’s quest towards rejuvenescence.

An appreciation of the particular role of competition law and policy during a post-recession period can be gained only by understanding the general benefits of competition. Some three decades ago Jamaica, like many other nations throughout the world, moved away from Government regulation towards liberalization. The process allowed enterprises to compete with each other in open markets. This created a new competitive environment, driven by market forces, and was expected to result in economic

efficiency, sustained economic growth and enhanced consumer welfare.

The Fair Competition Act 1993 was passed to prevent anti-competitive conduct and its enforcement authority, the Fair Trading Commission (FTC), was charged with fulfilling the Statute’s main objectives of “...maintaining and encouraging 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”. These objectives, for the most part, are in tandem with the general aims of most competition law systems which seek to protect competition in a particular jurisdiction by:

- ♦ preventing agreements which restrict competition;
- ♦ preventing monopolists or enterprises with market power from abusing that power;
- ♦ ensuring workable competition in industries dominated by few sellers; and
- ♦ monitoring mergers which reduce competition.<sup>5</sup>

Competition in Jamaica has brought benefits to many industries; one being the liberalization of the telecommunications sector with the signing of 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. The result of this has been the entry of several market players into the sector and the emergence of vigorous – even fierce – rivalry, resulting in consumers being offered a wide variety of services, and more value for less money.

The telecommunications sector is only one of many industries in which competition has resulted in consumer and other benefits. The danger of a recession, however, is that it essentially ‘...has the potential to be inimical to competition law and policy’.<sup>6</sup> According to John Fingleton, Chief Executive Officer of the United Kingdom Office of Fair Trading, this is because:

*“...the less visible and less immediate costs of restricting competition can look more attractive to policy-makers faced with a range of unpalatable options. Policies to relax competition in the US in the 1930’s and in Japan in the 1990’s arguably added to the duration of recession in both countries. Learning from history and the robust economic evidence linking competition to productivity growth, we need to ensure that today’s solutions do not inadvertently become tomorrow’s problems.”<sup>7</sup>*

When there is a recession, politicians are tempted and even pressured to intervene to address failing businesses, unemployment, and ‘consumer vulnerability’. Overall, there is a greater demand for public intervention. This is not good for competition in the long-term as, among other things, subsidies can prove to be costly for taxpayers, bolster inefficient enterprises, and create dependency; resulting in permanent changes to market structure.<sup>8</sup> Competition achieves its highest market objectives when it drives improved efficiency; specifically, by fostering the entry of new and efficient enterprises and driving the exit of inefficient ones. Additionally, innovation, fostered by competition, usually produces better value for consumers. In times of recession, Governments are likely to lean toward protectionism. *“The short-run may be prioritized; the exit of failing firms may be perceived as being more costly for society...and tolerance for uncertainty among consumers may decrease. Or...the immediate costs of competition to existing business, employees and consumers may be up-front and visible, with the benefits delayed and less visible.”*<sup>9</sup>

Recessions can promote long term productivity, driving out less efficient market players and leaving stronger, more efficient ones. By so doing, innovation and productivity growth are stimulated in the next period of recovery and expansion. By contrast, during a boom, inefficient players may survive and thrive. For these reasons, great caution should be exercised in intervening and providing, for instance, ‘bail-outs’.

Competition law and policy are crucial in ensuring that the long-term benefits of competition are achieved and that the long-term goals for economic development are not forestalled by knee-jerk reactions to a crisis. The voice of the FTC will be critical in counter-balancing the cries for public intervention. In this regard, advocacy will play a key role. Section 5(2) of the Fair Competition Act allows the Commission to engage in competition advocacy – particularly with respect to enterprises, consumers, policy makers and the Government.

In addition to advocacy, the Fair Competition Act provides for the consideration of factors such as efficiency, innovation, and level of consumer benefit in the assessment of certain types of conduct. These factors may serve as justifications to enterprises which, though accused of anti-competitive behaviour, are in fact demonstrating superior levels of efficiency. The Act also allows for the authorization of business practices in order ‘to promote the public benefit’. This allows the FTC to be ‘pragmatic and flexible’ in enforcing the law – an approach that might well be needed in the context of a recovering economy where crisis demands that some types of intervention may be prudent. This would also allow for continued and consistent monitoring of any such intervention.

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# Public choice theory and legislative amendment: the case of the Fair Competition Act, 1993

By Delroy Beckford

Legislative amendment has often been treated as a product of selfless public interest activity for the common good designed to enhance effective governance. In some jurisdictions, notably the United States, this view is less acceptable given the existence of interest group lobbying where legislative reform is reducible to a market in which legislation is bought and sold. This less than sanguine view of legislative reform is said to apply with equal force to competition legislation in the United States whereby public choice theory is used as a benchmark of analysis in preference to public interest theory.

Public choice theory of antitrust enforcement subordinates the public interest theory of antitrust regulation, holding instead that legislators are motivated by self interest. The public interest theory views antitrust policy as a legitimate response to market failure whereby consumer interests prevail. Competition legislation is then supposed to represent the legislator's benign interest as a seeker of protecting the public interest as in maintaining a competitive economy as a public good.

According to Judge Richard Posner of the United States Seventh Circuit Court of Appeals economic efficiency as a social norm establishes a *prima facie* case for having an antitrust policy because this is a fundamental public good.

More information or better people will result in better competitive outcomes. More information provides consumers with arsenal to approach the ideal of perfect competition which in turn militates against market failure exemplified by an abuse of monopoly power. Better people as in bureaucrats, administrators, judges, legislators and market participants could result from the development of a competition culture fostered by advocacy programmes whereby the internal logic and justification of a competitive economy are routinely proselytized.

This view of the state of affairs is often questioned as not being a true representation of competition legislation and its application as opposed to the desired course of competition legislation. An assault on the public interest view is taken by public choice theory. Much of what follows is familiar ground of the relevance of public choice as a framework for examining legislative outcomes.

Public choice argues that legislators are self interested individuals whose main concern is not of the public interest but of their own re-election. The legislative process is seen as a market of competing interest groups where political favours are bought and sold. This may be called the interest

group branch of public choice theory which tells us that legislative outcomes from the political process are the results of deals between self-interested actors who use public power to further private ends.

Consequently, the general public interest is often sacrificed due to the power of organized special interests. Special interest groups engage in rent-seeking behavior by attempting to obtain economic benefits for themselves through government intervention in the market on their behalf. Successful rent-seeking on the part of special interests results in government policies that cost the public more than they are worth, such as government programmes that become too large, legislation that insufficiently internalizes costs of private actors, or legislation that is skewed against the public interest.

Competition legislation is no less susceptible to this analysis because of the contending interests often associated with such legislation, that is, producers versus consumers and the appropriate apportionment of transaction costs for effective governance within markets.

Is public choice an acceptable account of the provisions of the Fair Competition Act (FCA) and attempts at amendment that have so far not borne fruit?

Two of the main provisions of the FCA regarded as the backbone of competition legislation relate to anticompetitive agreements and abuse of dominance. Examining these provisions is suggestive of tentative positions that could be sketched on the relevance of public interest and public choice theory in explaining legislative outcomes.

A convenient starting point is section 17 of the FCA which provides as follows:

*17.(1) This section applies to agreements which contain provisions that have as their purpose the substantial lessening of competition, or have or are likely to have the effect of substantially lessening competition in a market.*

*(2) Without prejudice to the generality of subsection (1) agreements referred to in that subsection include agreements which contain provisions that—*

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;*
- (b) limit or control production, markets, technical development or investment;*
- (c) share markets or sources of supply;*
- (d) affect tenders to be submitted in response to a request for bids;*
- (e) apply dissimilar conditions to equivalent transactions with*

*other trading parties, thereby placing them at a competitive disadvantage;*

*(f) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts, being provisions which have or are likely to have the effect referred to in subsection (1)*

*(3) Subject to subsection (4), no person shall give effect to any provision of an agreement which has the purpose or effect referred to in subsection (1); and no such provision is enforceable.*

*(4) Subsection (3) does not apply to any agreement or category of agreements the entry into which has been authorized under Part V or which the Commission is satisfied—*

*(a) contributes to—*

*i. the improvement of production or distribution of goods and services; or*

*ii. the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;*

*(b) imposes on the enterprises concerned only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a); or*

*(c) does not afford such enterprises the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.*

The provision does not expressly provide for pre-merger review but permits some review of agreements even if consummated.

Arguably, the absence of pre-merger review could suggest interest group capture to subordinate regulatory intervention in contractual freedom. An answer to this position could be that the absence of pre-merger review does not prevent review even if review is conducted post the merger as in, for example, where the agreement is established to result in a substantial lessening of competition in a market. Section 17 of the FCA permits this approach to be taken. Public interest theory would also seem to find support in a related provision that could operate as a pre-merger review proxy, that is, section 29 of the FCA that permits agency authorization of otherwise anticompetitive conduct provided the authorization satisfies the public interest test.

This provision, however, does not fit neatly into this perspective. There are no articulated criteria for determining the public interest under this provision and there is no certainty that public interest is meant to capture notions of economic efficiency exclusively given that the provision permits authorization even if the conduct for which authorization is sought is anti-competitive. That is, agency approval of the conduct is not barred even if the conduct is found to be anti-competitive.

That the provision relating to abuse of dominance does not establish that an abuse of dominance *simpliciter* is prohibitory conduct could also signal the importance of public choice trumping public interest particularly when other jurisdictions regard such conduct as a basic prohibition.

The standard employed for examining allegedly anti-

competitive conduct, that is, whether a rule of reason or per se approach is adopted, can also point to whether it is public interest or public choice that better explains the provisions of the FCA to which such standards are applicable.

Section 17 of the FCA employs a rule of reason standard even for agreements that fix prices although such agreements if in the nature of a cartel is prohibited in most jurisdictions without the requirement for demonstrating anti-competitive effects. Adopting a rule of reason as opposed to a per se standard subjects the agency's determination of anti-competitive conduct to greater uncertainty when it is to be reviewed by a court whereby competing economic analyses of the effect of conduct in a market need not result in the agency's view being accepted.

For this reason it is accepted as an article of faith that it is easier to prove a per se offense than one requiring a rule of reason standard. The challenges of proof inherent in a rule of reason standard could suggest that, to the extent that it is excluded in the FCA for basic prohibitions in other jurisdictions, public choice may account for this development if organized special interests lobby for this flexibility in the provisions of the FCA to examine anti-competitive conduct assumed to provide no pro-competitive benefits.

This is not to discount public interest theory as accounting for flexibility in the law that would avoid delays in the process of amendment to accommodate changes in economic thinking that may point to pro-competitive benefits from practices originally presumed or proven to be anti-competitive without redeeming features. Additionally, absolute prohibition can create rigidity and brittleness while flexibility can add durability to the law.

Judicial intervention can reduce this flexibility but this is most likely to be the case in mature competition jurisdictions with a long history of enforcing competition law. What the US Supreme Court was able to do in rejecting the per se standard for retail price maintenance agreements based on revised economic thinking on pro-competitive benefits from such agreements is probably not conceivable in a judicial culture with a heavy reliance on precedent.

Closely related to legislative outcome is legislative amendment. Public choice tells us that the process of amendment will largely be captured by special interests. There is not much in the way of an empirical study to test this view as it relates to the FCA.

The factual account of the ongoing process for amendment to the FCA suggests that amendment was or could have been broached from as early as 2001 because of the decision of the Court of Appeal in *Jamaica Stock Exchange v. FTC*, whereby the court recommended a court or a tribunal to be the adjudicating body to effect the de-merger between adjudicative and investigative functions identified in the FCA.

Amendments other than structural change have been suggested but my focus is on structural change in view of its significance to rectify a constitutional issue, that is, the potential for breach of the principle of natural justice

attendant on a merger of investigative and adjudicative functions. Secondly, structural change is a necessary condition for application and enforcement of some provisions requiring a finding by the competition agency absent amendment devolving that responsibility to a court or a tribunal.

Can public choice theory explain the delay in structural reform? Before addressing this question it is useful to set out the benefits of structural reform compared to another alternative that is feasible within the current legislative context of the FCA. A specialized tribunal is desirable if composed of the requisite expertise, is properly resourced, provides for binding decisions without recourse to the court for enforcement, and is established within a legislative scheme that specifies effective remedies for breaches.

In the current legislative framework direct access to the court may not be feasible for some breaches whereby a prior finding by the agency is a requirement before access to the court is permissible.

Amendment could either address those provisions requiring a prior agency finding before access to the court whereby that requirement would be removed to permit direct access or structural reform could be effected to allow a tribunal to decide on issues relating to breaches of the FCA.

However, a specialized tribunal moreso than a court is assumed to have the requisite experience and institutional knowledge to dissect and evaluate competing economic theories of the competitive effects of impugned conduct to inform optimal decisional outcomes in competition disputes.

In either case structural reform is a desirable outcome to the extent that it can facilitate robust enforcement of the competition legislation to approximate to the public good of economic efficiency. Public interest theory would suggest therefore that structural reform is the optimal outcome to

satisfy the public interest social norm of economic efficiency.

Structural reform has so far languished from over extensive deliberation on the appropriate provisions to be included in the draft Bill. This has been due to several factors, not least of which is contestations on policy regarding issues such as the strength of provisions to permit agency acquisition of information, remedies to be available to a tribunal, for example, the ability to impose fines, and the extent to which direct access to the court as a first resort for enforcement should be available.

Delay in amendment is not in and of itself suggestive of a premium given for public choice if extensive deliberation is necessary to achieve the optimal public interest outcome. In the meantime, however, much is lost in the way of effective enforcement the more lengthy the delay, resulting in indirect industry capture consistent with public choice theory.

### Concluding remarks

We may not arrive at a definitive position on the significance of public choice as opposed to public interest theory in explaining the delay in amendment with respect to the FCA as there is no empirical study on which to rely and the nature of anecdotal accounts may carry inconsistencies and differences of interpretation. Extensive delay in amendment, however, to the extent it fosters sub-optimal decisional outcomes, benefits groups that are less inclined to embrace increased competition in the market place thereby suggesting the significance of public choice over public interest as perhaps the more applicable framework for appreciating the impact, if not the purpose, of the delay in amendment.✚

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## A tale of competition - recession and recovery

*Continued from page 23*

Achieving the right balance between interventionist techniques for economic resuscitation and competition requires using all of the tools which competition law and policy provide including using its function of advocacy; and the ability (within legal parameters) to exercise flexibility in enforcing of the law.

It may be the best and worst of times ... Jamaica, having

emerged from the recent recession, faces the possibility that another one looms; but despite this, competition law and policy have all the tools to help partner the nation toward better and more fruitful times.✚

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### Endnotes

<sup>1</sup>David Magee, 'Global Recession 2011: It's Real, and It's Going to Hurt', *International Business Times* ([www.ibtimes.com](http://www.ibtimes.com)), September 23, 2011.

<sup>2</sup>Ibid

<sup>3</sup>Anastasia Anderson, 'Survival - Beating a Recession', *Jamaica Gleaner Newspaper*, November 10, 2011.

<sup>4</sup>Ibid

<sup>5</sup>R Whish *Competition Law* (4<sup>th</sup> edn Butterworths London 2001) 1 - 1

<sup>6</sup>John Fingleton, 'Competition in Troubled Times' ([www.oft.gov.uk](http://www.oft.gov.uk)), January 20, 2009.

<sup>7</sup>Ibid

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<sup>9</sup>Ibid





# Crisis cartels: the approach of competition agencies

By Sashawah D. Newby

**T**he global economic recession has posed challenges not only for firms, but also for competition agencies desirous of carrying out their mandate of maintaining and encouraging competition in economies worldwide. The downturn in business and consequent loss of profits has resulted in firms seeking to collaborate to, *inter alia*, fix prices, limit or restrict output or share markets. The use of cartels is therefore one way in which firms attempt to bolster their businesses in an economic crisis.

In simple words a cartel is “an agreement between businesses not to compete with each other”.<sup>1</sup> A cartel is defined as an agreement that businesses enter into to control price, production or marketing arrangements and not compete with one another. For example, two or more businesses may engage in a cartel to agree to fix prices, restrict output, allocate markets, or rig bids for goods or services. Cartels harm other businesses and consumers by artificially raising prices, restricting choice or reducing product quality or service. Cartel conduct is sometimes referred to as collusion, conspiracy or concerted practices.

A crisis cartel refers to such “agreements or other forms of co-operation aimed at addressing difficulties arising in the context of industries suffering from overcapacity in times of economic recession and/or declining demand”.<sup>2</sup> The term may refer to a cartel that was formed during a severe sectoral or global economic downturn without state approval, or it may refer to situations where a government or state agency permits such agreements during a period of economic distress.<sup>3</sup> Examples include industrial restructuring agreements where industry players come together to find solutions in times of crisis for example to reduce overcapacity and/or agree a price level to prevent some firms from going bankrupt.

## Authorization

United States antitrust laws do not provide for any special treatment via exemptions, authorizations, other change in the legal standards or consideration for cartels during economic downturns. In their view cartels are illegal at any time, and sectors are more vulnerable to collusion in times of economic hardship when the incentives for colluders to defect from price-fixing arrangements are weaker.<sup>4</sup> For them, “there is no adequate substitute for a competitive market, particularly during times of economic distress...and vigorous antitrust enforcement must play a significant role in the Government’s response to economic crises to ensure that markets remain competitive”.<sup>5</sup>

Australia and New Zealand on the other hand have provisions which permit the granting of Authorizations. For instance, under section 88 of the Australian Trade Practices Act, the Australian Competition & Consumer Competition (ACCC) may authorize certain anti-competitive activity such as price fixing or exclusive dealing; but under section 90 may only do so where it is satisfied that the result or likely result would be a benefit to the public and that benefit would outweigh the detriment to the public constituted by any lessening of competition. The applicable test depends upon the activity involved.

Section 29 of the Fair Competition Act (FCA) of Jamaica provides:

*“(1) Subject to subsection (2), any person who proposes to enter into or carry out an agreement or to engage in a business practice which in the opinion of that person is an agreement or practice affected or prohibited by this Act, may apply to the Commission for an authorization to do so.*

*(2) In respect of an application under subsection (1), the Commission - (a) may notwithstanding any other provision of the Act, if it is satisfied that the agreement or practice as the case may be, is likely to promote the public benefit grant an authorization subject to such terms and conditions as it thinks fit;....”*

For which activities then can authorizations be granted under the FCA? According to section 29 *any agreement or practice affected or prohibited by this Act* may be the subject of request for authorization. This contrasts with the Australian provision which does not permit an authorization in cases of misuse (abuse) of market power.

Is the Fair Trading Commission (FTC) at large to grant authorizations or is there a standard to be met? The FTC may grant an authorization for firms to enter into arrangements or carry out conduct which would otherwise be prohibited if the FTC is satisfied that such conduct is *likely to promote the public benefit*. What then is the public benefit?

The Australian Competition Tribunal has defined public benefit as:

*“anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements...the achievement of the economic goals of efficiency and progress...the assessment of efficiency and progress must be from the perspective of the society as a whole: the best use of society’s resources...efficiency is said to encompass allocative efficiency, production efficiency and dynamic efficiency”.*<sup>6</sup>

The Tribunal takes a broad view of what is a benefit:

“...they have been taken to include anything which...increases... the well-being of members of society...Particular emphasis is placed on positive...consequences for the achievement of the goal of maximizing economic efficiency (including dynamic efficiency leading to economic progress”.<sup>7</sup>

The Tribunal also establishes a benchmark against which to identify and weigh public benefit claims, “in weighing relevant public benefits, the Tribunal must compare the position which would or would be likely to exist in the future, on the one hand if authorization were to be granted, and on the other hand if it were absent”.<sup>8</sup>

Consequently, if a firm is able to show that the arrangement or conduct in question promotes efficiency or otherwise increases the wellbeing of members of society, through for example, innovation, it may be able to persuade the FTC to authorize certain anti-competitive conduct, provided the comparative positions with or without authorization are favourable. The FTC may make such authorization subject to *such terms and conditions as it thinks fit*.

### Exemption/Defence

Cartel conduct is also reviewed under section 17 of the FCA which in subsection (4) provides :

(4) Subsection (3) does not apply to any agreement or category of agreements the entry into **which has been authorized under Part V or** which the Commission is satisfied-

- (a) contributes to
  - (i) the improvement or production or distribution of goods and services; or
  - (ii) the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- (b) imposes on the enterprises concerned only such restrictions as are indispensable to the attainment of the objectives mentioned in paragraph (a); or
- (c) does not afford such enterprises the possibility of eliminating competition in respect of a substantial part of the goods or services concerned.

The EU equivalent to section 17 is of similar wording. Under Article 81(3) of the Treaty of Rome (now Article 101 (3)), exemptions can be granted which allow certain agreements and practices if they have significant countervailing benefits either on their individual merit or through the application of a block exemption.<sup>9</sup>

Regarding crisis cartels, the traditional approach of the European Commission (EC) has been to distinguish between *cyclical overcapacity* and *structural overcapacity*. Cyclical overcapacity refers to a drop in demand during an economic downturn or recession. In these circumstances economic theory provides that supply and demand can be brought into equilibrium relatively quickly through the normal play of market forces with the least efficient players leaving the market by their own choice, or as a result of insolvency.<sup>10</sup> It is generally assumed therefore, that competition would correct the problem of cyclical over-capacity available in the market and, over time, bring the market back to equilibrium. As a result, the ECJ has concluded that a cyclical overcapacity in principle cannot justify the formation of cartels.<sup>11</sup>

Structural overcapacity is defined as existing “where over a prolonged period all the undertakings concerned have been experiencing a significant reduction in their rates of capacity utilization and a drop in output accompanied by substantial operating losses and where the information available does not indicate that any lasting improvement can be expected in this situation in the medium term”.<sup>12</sup> In this case market forces and competition alone are not sufficient to remedy the overcapacity problems. It is in this rare situation that the EC considers that crisis cartels *may* be exempt. However, for an individual exemption to be granted four conditions **must** be met:

- a. the agreement must contribute to improving the production or distribution of goods or to promoting technical or economic progress;
- b. it must allow consumers a fair share of the resulting benefits;
- c. the restrictions imposed must be indispensable to the attainment of these objectives;
- d. the agreement must not afford parties the possibility of eliminating competition in respect of a substantial part of the products in question.

In EU jurisprudence the party claiming the exemption must prove that the four conditions are likely to be fulfilled. Where they are fulfilled the restrictive effects on competition generated by the agreement are considered to be offset by its pro-competitive effects, thereby compensating consumers for the adverse effects on the restriction of competition. It is very difficult for parties to succeed in satisfying all four requirements.

Section 17 of the FCA allows for an exemption/efficiency defence granted by the FTC. The prohibition against entering into anti-competitive agreements does not apply to any agreement authorized by the FTC under section 29, or to any agreement which the FTC is satisfied *inter alia*, contributes to the improvement of production of or distribution of goods and services or the promotion of technical or economic progress while allowing consumers a fair share of the resulting benefit. In other words, the agreement should lead to “appreciable objective advantages of such a kind as to compensate for the resulting disadvantages for competition”.<sup>13</sup>

The approach of the courts and competition regulators to an efficiency defence/justification is to place a heavy burden/onus on the party asserting it and “require the parties to the agreement to demonstrate through credible substantiated claims of efficiency gains that the cost savings and other benefits brought about by such efficiency gains are greater than and offset any anti-competitive effects that are likely to result from the agreement”.<sup>14</sup>

A business justification must be a credible efficiency or pro-competitive rationale for the conduct in question, attributable to the Respondent, which relates to and counterbalances the anti-competitive effects and/or subjective intent of the acts. “It provides an alternative explanation as to why the impugned act was performed, which in the right circumstances might be sufficient to counterbalance the evidence of negative effects on

competitors...therefore a business justification proffered by a Respondent must be weighed in light of any anti-competitive effects to establish the overriding purpose of the impugned act”.<sup>15</sup>

Unlike the EU article 101(3), the conditions to be satisfied under section 17(4) of the FCA are **not** cumulative (perhaps through faulty drafting). Therefore, on the face of it, the task of satisfying the FTC appears an easier burden to discharge than under the EU article. However, each element is a formidable one in its own right and a very heavy burden remains on the firm claiming the benefit of the provision to satisfy the FTC that that burden is discharged in respect of any of the subsections.

## Conclusion

Cartels are generally regarded as the most egregious violations of competition law. The prevailing view and policy of the FTC is therefore in line with competition authorities around the world. That is, an abiding belief that competition is itself desirable and should be fostered and promoted as “it encourages efficient enterprising operators and discourages inefficient ones, thereby benefitting the economy in general, and consumers in

particular through lower prices and greater responsiveness to consumer demands. Competition assists efficient companies to grow to a size which enables them to compete successfully in global markets and is therefore essential to a country's economic survival”.<sup>16</sup>

Competition law, therefore as in the US, is intended to be applied in good and bad economic times. “It is impossible to distinguish between normal competition and ruinous competition. Potentially any competition is ruinous to the least efficient undertakings”.<sup>17</sup> Competition policy exists to ensure that improved efficiency, innovation and competitiveness are not undermined by cartelization.<sup>18</sup> As the US experience has illustrated, the relaxation of competition law achieves the opposite effect and so “keeping markets competitive is no less important during times of economic hardship than normal times”.<sup>19</sup> Competition policy can therefore be one of the solutions for recovery. Consequently, it is only where justifiable efficiencies obtain that any approval/ exemption of cartels is permitted in accordance with the provisions of the FCA.✚

Sashanah D. Newby is a Legal Officer at the Fair Trading Commission.

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<sup>24</sup>“Crisis Cartels: Can they be justified?” Global Forum 17<sup>th</sup> and 1<sup>st</sup> February 2011, Crisis Cartels, Competition Authority of Ireland

<sup>3</sup>OECD Roundtable on Crisis Cartels, October 2011 at p. 9

<sup>4</sup>Contribution from the United States at Session III of the OECD Global forum on Competition-Crisis Cartels, February 17 and 18, 2011 at p. 2

<sup>54</sup>“Vigorous Antitrust Enforcement in this Challenging Era,” Christine A. Varney, Assistant Attorney General, Antitrust Division, U.S. Department of Justice, remarks as prepared for the centre for American Progress, May 11, 2009 available at <http://www.justice.gov/atr/public/speeches/245711.htm>.

<sup>6</sup>*Re 7-Eleven* (1994) ATPR 41-357 at 42,677

<sup>7</sup>*Re VFF Chicken Meat Growers' Boycott Authorisation* (2006), Accmpt 9 at para. 75

<sup>8</sup>*Re Queensland Independent Wholesalers Ltd* (1995) ATPR 41-438 at 40,960-96

<sup>9</sup>Khemani, R. Shyann, “Application of Competition Law: Exemptions and Exceptions”, United Nations Conference on Trade and Development, UNCTAD/DITC/CLP/Misc. 25

<sup>10</sup>Crisis Cartels: Can they be justified?” Global Forum 17<sup>th</sup> and 1<sup>st</sup> February 2011, Crisis Cartels, Competition Authority of Ireland at p. 1

<sup>11</sup>*Joined Cases* T-263/01, T-239-01, T-244/01 á T-246-01, et T-252-01 *Tokai Carbon ea./Commission* [2004] ECR II-1181 at para. 345

<sup>12</sup>EC Twelfth Report on Competition Policy, point 38

<sup>13</sup>*Joined Cases* C-501/06 P *et al, GlaxoSmithKline* at para. 92

<sup>14</sup>Competitor Collaboration Guidelines, 2009 at p. 22, Competition Bureau, Canada

<sup>15</sup>*Canada (Commissioner of Competition) v Canada Pipe Co.*, 2006 FCA 233 at para. 87-88

<sup>16</sup>Inquiry as to section 46 and section 50 of the Trade Practices Act, Australia, 1974, Parliament of the Commonwealth of Australia, May 2002 at p. 5

<sup>17</sup>T-29/92 [1995] ECR II-289 at 294

<sup>18</sup>Crisis Cartels: Can they be justified?” Global Forum 17<sup>th</sup> and 1<sup>st</sup> February 2011, Crisis Cartels, Competition Authority of Ireland at p. 13

<sup>19</sup>Shapiro, Carl “Competition Policy in Distressed Industries” Remarks prepared for the ABA Antitrust Symposium: Competition as Public Policy, May 2009.

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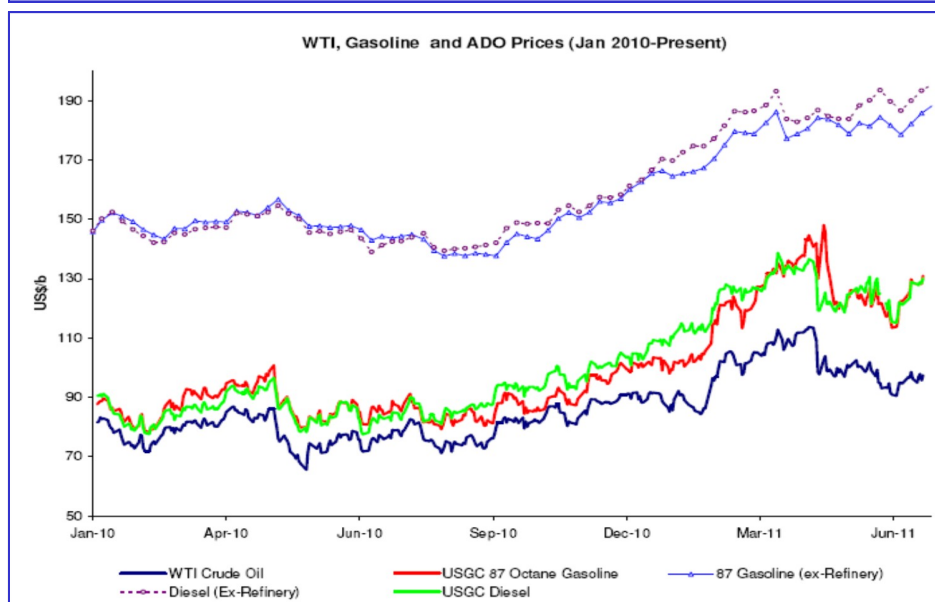
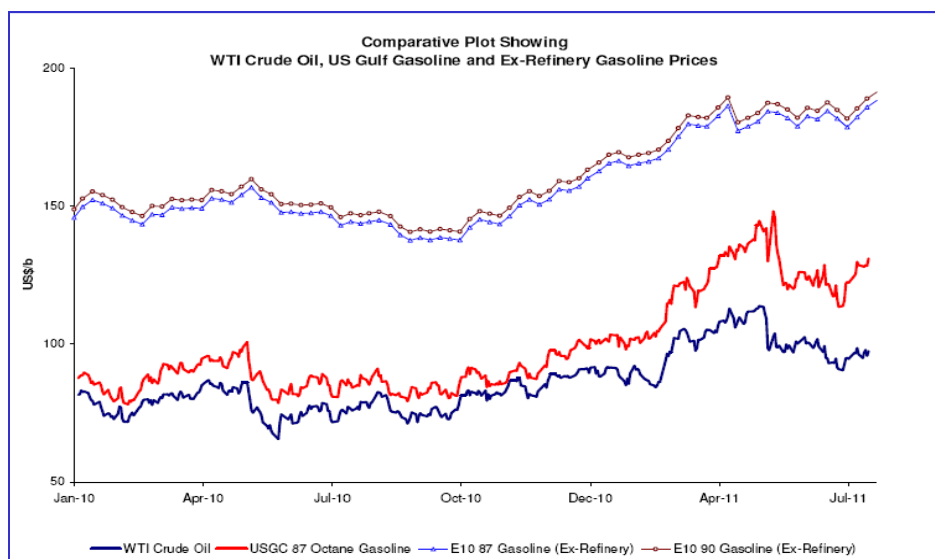
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# PETROJAM LIMITED'S PRODUCT PRICING POLICY



**G**lobal Trading in oil is facilitated by two main factors: the ease in moving oil in petroleum tankers across oceans; and shortages or imbalances in the supply or demand for crude oil in any region in the world.

Any shortage in the supply of crude oil, in a major supply country results in increased prices on the world market. This is because the market immediately moves to balance by seeking supplies from other sources until supply and demand are again in equilibrium and prices stabilize.

Similarly, if there is a surplus in one region, the price tends to fall. As a

result, the price at which crude oil trades at any given time tends to be similar worldwide. The global nature of the market also explains why significant geo-political events anywhere in the world affect oil prices in every market.

## Crude oil and its effect on the price of fuels

Crude oil is the raw material used in the manufacture of refined petroleum fuels. The price of crude oil sets the general price level and an increase or decrease in the market price of crude oil is reflected in the refiner's output cost for converting crude oil into refined products. Such products include

gasoline jet fuel and diesel oil. Refiners sell refined or finished products to marketers and distributors, who in turn add their margins and pass on the price to consumers.

There are several grades and types of crude oils available on the world market; and therefore when prices are quoted for a particular grade, such as West Texas Intermediate (WTI) or Light Sweet Crude, they serve only as an indicator of market prices rather than the price of a specific crude type. The grade or type of crude oil used in production is determined by the Refinery's production capability.

## Determination of refined product prices

Petrojam delivers Petroleum products, not crude, to the domestic market. It is important for persons to make this distinction, since very often movement in crude oil prices are misinterpreted as product price movements.

## Crude and product price benchmarks

Jamaica's petroleum product prices are indexed to the US Gulf Coast (USGC) reference prices, which report on the prices of finished products. The USGC reference price is an appropriate pricing reference for several reasons including transparency & liquidity of the market. Mexico, Venezuela and Trinidad, Petrojam's trading partners, also use the USGC prices to determine the value of their petroleum products. Petrojam uses the West Texas Intermediate (WTI) reference prices in purchasing its crude.

## Petroleum product pricing in Jamaica

Petrojam's ex-refinery pricing arrangement is in keeping with the Government of Jamaica's (GOJ) policy that Petrojam must be the least cost option for the supply of petroleum and petroleum products to Jamaica on a sustained basis. A key element of this policy is that whenever price changes occur in the international market, they

## Analysis of Price Correlation

Prices	Correlation	Implication
WTI Crude Oil vs. USGC Gasoline	96	USGC gasoline prices move in the same general direction as crude prices. However, other factors (apart from crude price) influence the gasoline price.
Ex-Refinery Gasoline vs. WTI Crude Oil	92	While there is reasonable correlation between ex-refinery prices & the WTI crude oil price, changes in the crude price alone are insufficient to account for changes in the gasoline price.
Ex-Refinery Gasoline vs. USGC Gasoline	97	Very strong, positive correlation. This means that almost all of the variation in the ex-refinery gasoline price is explained by variations in the underlying USGC reference price for gasoline. The remaining 3% is due to other factors (such as the presence of fixed cost components in the ex-refinery price build-up).

should be reflected in local prices. Similarly, changes up or down in GOJ taxes and in the exchange rate also take effect immediately.

Prices are determined based on the ex-refinery price formula, which is the wholesale price at which liquid petroleum gas (cooking gas) and fuels for the transportation sector, such as gasoline and automotive diesel oil are sold to the distributive trade.

### Ex-refinery pricing formula

The ex-refinery pricing formula is based on the principle of import parity to establish the least cost of supply and represents the opportunity cost of importing products directly in the volumes and grades needed. These product prices which are published by

Petrojam are independent of Petrojam's production costs. They are therefore not "Cost-Plus". Parity prices reflect logical Jamaica market prices for the products.

This methodology ensures transparency in domestic pricing. To be profitable, the refinery output must be competitive with other import options.

Ex-refinery product prices, calculated weekly, for the domestic market are:

- ♦ Indexed to the USGC reference price for the comparable product
- ♦ Structured to be transparent
- ♦ Competitively priced
- ♦ Market driven

Pricing Procedure:

- ♦ The starting point is the USGC reference price published for each

product.

- ♦ The ex-refinery price is determined by adding certain logistic costs, financing costs, foreign exchange costs and GOJ taxes to the reference price. This is then converted to Jamaican dollars to establish the price per litre.
- ♦ The pricing formula ensures transparency so that competitive prices are always a feature of the Jamaican market.

Petrojam Limited remains true to its mission, ***"to supply petroleum products at internationally competitive prices and quality, acting in the best interest of Jamaica and all other stakeholders"***.

*Contributed by Petrojam Limited*



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Jamaica's Energy Company




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Committed to Excellence in Education


PETROJAM LIMITED

SERVING JAMAICA'S ENERGY NEEDS

# FTC study of price variation in retail petroleum prices



## INTRODUCTION

Expenditure on petroleum continues to be a concern at the global, regional, national and household levels. In this article, we seek to highlight some of the crucial factors causing the observed variation in the retail price of petroleum products across dealer locations. We focus specifically on two structural characteristics of retail petroleum markets: (i) the number of competing dealers; and (ii) the extent of controlling influence of marketing companies over dealers.

## METHOD

### *Competing dealer locations*

The study captures a sample of 198 dealer locations island wide. The competitive landscape in this industry, however, comprise a set of distinct geographic areas within which dealers respond more readily to the business strategies of other dealers located in these areas than they do to strategies of dealers located outside the areas. For example, a dealer located at the National Heroes Circle area in downtown Kingston is more likely to lower its pump price in response

to the lowering of prices of a dealer located in the vicinity of the National Heroes Circle than to dealers located in Half Way Tree.

### *Degree of retail price restraints*

There are three levels in the distributive trade for petroleum. At the top of the supply chain is the state owned refinery, Petrojam, which imports crude oil which is subsequently refined to produce various petroleum products. The refined petroleum products are then sold to marketing companies. The prominent marketing companies operating in Jamaica are: Total, Texaco, Epping, Petcom, Cool Petroleum and Unipet. Marketing companies supply dealers with the refined products which are then retailed to final consumers (motorists). The distributive trade has been organized such that dealers receive petroleum from only one marketing company. The degree of influence which marketing companies exert over the price charged by their dealers differs within and across marketing companies. As will be made clear later, restraints imposed on dealers have important effects on the pump price.

## RESULTS AND ANALYSIS

### *Distribution of zones of competition*

We identified 67 zones of competition across Jamaica.<sup>1</sup> Motorists typically have to choose among three dealers in each zone.<sup>2</sup> In 23 zones, motorists have no choice as there is only one dealer. These single-supplier zones are distributed with at least one such zone in all parishes excepting for Manchester and St. James.<sup>3</sup> At the other extreme, motorists in the vicinity of Spanish Town have as many as 11 dealers to choose from.

### *Competition typically lowers prices*

The results confirm that motorists derive considerable benefits through more attractive (lower) prices due to competition among dealers (Table 1). As indicated earlier, there are 23 zones served by only one single dealer. Pump prices in these zones are determined in the absence of competitive pressures from rival dealers. Accordingly, these zones are referred to as uncompetitive zones. By similar reasoning, zones which are served by more than one dealer are referred to as competitive zones. The benefit of competition to motorists is assessed, therefore, by comparing the price of gasoline in uncompetitive zones with the price in competitive zones.

Gasoline (87 octane) in uncompetitive zones was sold at an average price of \$103.86 per litre. By way of comparison, gasoline was sold at more attractive prices (that is, cheaper) in competitive zones. For example, the competition which



manifested from the rivalry between two dealers resulted in motorists saving \$1.25 per litre, on average, compared to uncompetitive zones. This as gasoline was sold for an average price of \$102.61 per litre in the 16 zones in which there were only two dealers. The greatest benefit to motorists due to competition is observed in the only zone where there are 10 dealers as gasoline was sold for \$95.74 per litre, representing benefits of approximately \$8.12 per litre when compared to zones where competition is absent.

*The main conclusion in this section is that up to a point, gasoline is typically cheaper in areas where more dealers are located.*

#### *Marketing companies typically influences prices upwards*

The tendency for competition to lower pump prices is appreciated by most motorists. What is probably less obvious to the public is the tendency of prices to reflect competition among dealer locations which operate under differing influence from their respective marketing companies. We can classify dealer locations in two broad categories: (i) price restraints (PR); and (ii) no price restraints (NPR). Dealer locations classified as PR are those at which the pump price is set directly by the marketing company. Similarly, dealer locations are classified as NPR if pump prices are set by the dealer.

The data suggest that motorists tend to benefit more favorably from NPR dealer locations as gasoline is sold cheaper at NPR dealer locations relative to PR dealer locations (Table 7B). Specifically, in the 8 uncompetitive zones at which PR dealers are located, gasoline is sold at \$104.90 per litre while at the 15 uncompetitive zones where NPR dealers are located, gasoline is sold at \$103.30 per litre, representing a saving of \$1.60 per litre. Further in zones in which two dealers are located, motorists will save, on average, \$2.17 per litre by pumping gas where two NPR dealers are competing rather than where an NPR dealer is competing with a PR dealer.

*The main conclusion in this section is that gasoline is typically cheaper at dealer locations where marketing companies do not exert a controlling influence over pump prices.*

## CONCLUSION

The factors behind the observed variation in retail gasoline prices concerns the public in general and by extension the policymakers. The reported results confirm that in addition to the number of dealers operating in a given geographic

region, the extent to which marketing companies have control over dealer locations plays a role in the price of petroleum at the pumps. The data imply that motorists tend to benefit more favorably in areas where more dealers are located and at dealer locations where marketing companies do not directly influence pump prices.

At first sight, the small savings identified may seem deceptively insignificant. Due to the huge volume in which gasoline is consumed, however, even small savings at the pump could amount to a significant reduction in expenditure. For instance, we conservatively estimate that there are 508,690 motor vehicles in Jamaica.<sup>4</sup> If we also assume that motorists purchase approximately 50 litres of gasoline per week, it suggests that the savings of \$2.17 per litre on the pump price amounts to aggregate annual savings of approximately \$2.9 billion for motorists.

The preliminary findings of this study should be of import to policy makers- although more research is needed to confirm these results. If the results are confirmed, however, policy makers may want to reconsider whether permitting marketing companies to establish the pump price of gasoline remains in the best interest of the public.✚

**Table 1** The Effect of Rivalry on Pump Price

Number of Dealers	Number of Zones	Average Pump Price (in \$ per litre)
1	23	103.86
2	16	102.61
3	9	102.21
4	5	101.13
5	7	99.65
6	1	103.62
7	3	97.91
8	0	n/a
9	1	97.26
10	1	95.74
11	1	100.56

#### Endnotes

<sup>1</sup>Competition Authorities commonly refer to these areas as the relevant geographic markets.

<sup>2</sup>The mean number of dealers in each zone is 2.9 while the median number is 2.

<sup>3</sup>In this analysis, Kingston and St. Andrew are treated as one parish. The only single supplier zone of competition identified in Kingston and St Andrew is the geographic area in the vicinity of the Norman Manley International Airport.

<sup>4</sup>World Bank data suggest that in 2006, Jamaica's motor vehicles density (excluding motor bikes) was 188 per 1000 inhabitants. If we assume that this density has not declined since 2006 and use the fact that the latest population count was recorded at 2,705,800 at the end of 2010 (Statin, 2011), then there are at least 508,690 motor vehicles in Jamaica.

# FTC Statistics

## Number of complaints received during the period April 1, 2009 - September 30, 2011

PRODUCTS AND SERVICES	Year 2009/2010	Year 2010/2011	April - September 2011
Automobiles	20	32	21
Business Practice	1	1	-
Clothing/Accessories & Textiles	1	-	3
Computer	1	6	3
Construction/Home Repair Supplies	5	-	3
Education	15	19	12
Energy	5	9	2
Financial Services	12	15	10
Food/Supplements & Beverages	6	2	5
Funeral Services & Supplies	-	-	-
Gaming & Contest	2	7	4
Gardening Supplies & Horticultural Products	1	-	-
Government Services	5	3	2
Household Appliances & Accessories	19	12	4
Household Furnishings	7	7	2
Industrial Machinery & Products	-	-	-
Insurance <sup>1</sup>	6	13	-
Leisure & Recreation	5	5	1
Medical Supplies, Services & Device	2	1	-
Office Furnishing/Equipment & Supplies	1	-	1
Personal	-	-	-
Petroleum Products & Accessories	4	2	-
Professional & Specialist Services	8	8	1
Real Estate	10	7	2
Telecommunications Equipment/Services	59	109	22
Transportation Systems	6	5	4
Utilities.	4	1	3
Other <sup>2</sup>	4	6	5
<b>TOTAL</b>	<b>209</b>	<b>270</b>	<b>111</b>

<sup>1</sup> Includes Auto, Health, Life and Peril.

<sup>2</sup> Includes product areas such as Agricultural Products, Funeral Services, Auto Repair Services and Industrial Machinery & Products



## TEST YOUR KNOWLEDGE

The Fair Competition Act (FCA) was introduced for the maintenance and encouragement of business in Jamaica. More competition means lower prices, better quality products and more product choices for consumers. *How much do you know about competition law in Jamaica?* Test your knowledge by answering the questions below.

1. The FCA addresses both competition protection and consumer protection issues. *True or False.*
2. Collusive activities, such as price fixing, market division and customer allocation, are illegal in Jamaica. *True or False.*
3. Consumers benefit when enterprises collude to increase price. *True or False.*
4. Mergers are potentially harmful to a competitive environment. *True or False.*
5. Monopolies are illegal under the FCA. *True or False.*
6. Misleading advertising is an offence under the FCA. *True or False.*
7. Sale above advertised price is an offence under the FCA. *True or False.*
8. An arrangement between a supplier and a reseller whereby the reseller is prevented from advertising, displaying or selling goods below a specified price is illegal. *True or False.*
9. It is illegal for a supplier to specify a maximum price for resale. *True or False.*
10. A dominant enterprise may abuse its dominant position by restricting the entry of an enterprise into a market, imposing unfair buying or selling prices or granting preferential treatment to some enterprises over others. *True or False.*
11. An agreement between two or more persons whereby one or more of them agree not to submit a bid in response to an invitation for bids or tenders is referred to as \_\_\_\_\_.
12. The maximum penalty for an enterprise under the FCA is \_\_\_\_\_.

## Sudoku

8				6			4	3
				2	1			
	6		4				7	
2	7						6	
		9	1				8	5
	3				5		1	
			8	9				
7	2							6

**Instruction:** Fill in the grid so that every column, row and 3x3 square includes all digits from 1 to 9.

## Solutions

6	9	5	4	1	3	8	2	7
7	2	3	6	9	8	1	5	4
4	1	8	5	7	2	6	3	9
5	8	7	2	3	1	9	4	6
2	3	9	7	4	6	5	8	1
1	6	4	8	5	9	3	7	2
9	7	1	3	8	4	2	6	5
8	5	6	1	2	7	4	9	3
3	4	2	9	6	5	7	1	8

1. True 2. True 3. False 4. True 5. False 6. True  
7. True 8. True 9. False 10. True 11. Bid-rigging 12. \$5 million



