



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

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

In this Issue we feature matters undertaken by the FTC during the period July 1, 2011 to September 30, 2011.

COURT ISSUE

LIME vs. FTC

The Supreme Court has dismissed an application by Cable and Wireless Jamaica Limited (LIME), which sought leave to apply for judicial review to have the Court compel the FTC to: (1) seek an injunction against Digicel and Claro under section 47 of the Fair Competition Act (FCA) on the basis of breaches of sections 17 and 35 of the FCA; (2) issue directions under section 21 of the FCA to prevent the abuse of dominance given effect by the transaction between Digicel and Claro; and (3) issue directions under section 21 of the FCA to halt the steps already taken by Digicel and Claro to combine their operations pending final judgment in the current action should leave be granted.

In effect, the dismissal of the application means that the Court has recognized that the FTC has a statutory discretion under the FCA as to how and under what sections to carry out its investigations.

The matter relates to the transaction between Digicel and Claro whereby Digicel will acquire the operations and licenses of Claro.

CONSENT AGREEMENTS

Career Development Institute

Having investigated the conduct of Career Development Institute (CDI) with respect to its failure to provide National Vocational Qualification of Jamaica (NVQJ) certification as promised; and having concluded that the action of CDI is likely to amount to a breach of section 37 of the FCA, the FTC has entered into a Consent Agreement with CDI.

The FTC received a complaint from a student of CDI alleging 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.

The Consent Agreement requires that CDI pay the FTC's costs, refund the Complainant's tuition, as well as publish a public apology in a daily newspaper.

Jamaica AutoClub

The FTC has entered into a Consent Agreement with Jamaica AutoClub (JAC), a member of the EMCD Group Limited, after being satisfied that representations made by JAC with respect to discounts on motor vehicle insurance premiums were deemed false. In its brochure, Jamaica AutoClub 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 Consent Agreement requires that JAC pay the FTC's costs and issue a public apology in a daily newspaper.

COMPLETED INVESTIGATIONS

Fertilizer

The FTC has completed its investigation into Newport-Fersan (Jamaica) Limited's (NFJL) pricing of fertilizer; and concluded that it has not found any evidence to support the claim that NFJL has abused its dominance within the remit of the Fair Competition Act.

The Complainant alleged that NFJL engaged in anticompetitive conduct by entering the market in 2006 with unfairly low prices, and then sharply increased its prices with the subsequent exit of its only competing supplier, Antilles Chemical Co. A crucial finding of the investigation was that since NFJL's entry into the market, its prices consistently remained above appropriate measures of its costs; notwithstanding the fact that the prices increased sharply following the exit of Antilles Chemical Co. This finding is inconsistent with the claim that the exit of Antilles Chemical Co. was precipitated by any anticompetitive conduct on the part of NFJL.

Steel

The FTC has completed its investigation of alleged predatory pricing on the part of Tank-Weld Metal Products Ltd. (TWM), one of only two significant importers of steel products; and concluded that the evidence does not support the allegation.

The Complainants alleged that TWM was supplying steel for a price at which it could not have recovered the costs incurred to acquire the commodity on the world market and therefore was engaged in anticompetitive conduct. While the investigations confirmed that TWM was supplying steel at a price significantly below acquisition costs, it was evident also that the price was sufficiently high to cover the costs of replacing the steel. Further, favourable market conditions of exit and re-entry indicate that TWM's main rival is well positioned to disrupt any

attempt by TWM to exercise market power as a result of its challenged pricing strategy; and makes it unlikely in the foreseeable future, therefore, that TWM could recoup losses arising from this conduct.

OTHER NEWS

Appointment of New Commissioner

Mr. Emile Leiba, an Attorney-at-Law admitted to the Jamaican Bar in 2002, was appointed Commissioner of the Fair Trading Commission in June 2011. He is a graduate of the University of the West Indies with a Bachelor of Laws Degree, LL.B (Hons.) and 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 currently practices primarily in the areas of Commercial Litigation, Maritime Law and Employment Law. He has acted for several international and local clients and litigated at the Supreme Court and Appellate levels; and 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.

Monitoring of Airfares

With the introduction of REDjet in the market for airline services within the Caribbean, the FTC has commenced collecting information on fares being offered by airlines on several routes, including flights to and from Jamaica. REDjet has advertised that it will be offering low priced commercial regional flights to and from several Caribbean countries.

The FTC is monitoring the market with a view of quantifying the benefits to consumers arising from REDjet's recent entry into the Caribbean.

12th Shirley Playfair Lecture

On September 13, 2011, the FTC hosted its 12th lecture in the Annual Shirley Playfair Lecture Series, under the theme "Coordinating to Compete: Limitations in the Motor Vehicle Insurance Market.

The main speaker was Mr. Harold Wong, Senior Manager – Underwriting of Advantage General Insurance Company, who was joined on a panel by Mr. Leon Anderson, Deputy Executive Director of the Financial Services Commission (FSC) and Mr. Cedric Stephens, Insurance Consultant. Miss Wendy Duncan, Legal Officer of the FTC, presented on several key highlights and issues that are raised in the FTC's ongoing study of the motor vehicle insurance market. The panel fielded questions from the audience in the discussion segment that was moderated by Commissioner Emile Leiba.

Mr. Wong's presentation highlighted the financial plight of the industry noting that for the five year period ending 2010, the industry recorded losses in underwriting; 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. Anderson's presentation highlighted the role on 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.

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.

The presentations are posted on the FTC website – www.jftc.gov.jm