



Market Study Review – Supply of Gasoline in Jamaica

The FTC's Recommendations

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This report is a revision of the Code of Conduct developed for the Petroleum Industry in Jamaica which was done by the Fair Trading Commission in 2004. The Code of Conduct was designed to improve the business relationship between petroleum marketing companies and gasoline retailers with a focus on protecting Jamaican consumers.

I. Introduction

1. The Fair Trading Commission (FTC) conducted an industry study on the petroleum industry ending in 2004. The study aims to assess if the conduct of operators within the industry breached the Fair Competition Act and to develop a Code of Conduct for marketing companies and gasoline retailers.
2. In the 2004 report, the Staff discloses several challenged conducts that was brought to our attention and that could be in breach of the Fair Competition Act (FCA). These conducts include: retailing below cost, discriminatory pricing, exclusive dealing, resale price maintenance and price fixing. The conducts are examinable under sections 17, 19-21, 25, 33 and 34 of the FCA.
3. The Code of Conduct was guided by the findings of the investigation conducted by the FTC and discussions held with stakeholders within the petroleum industry. The FTC now reviews the Code with a view to improving the competitive process within the petroleum industry and ultimately increasing consumer welfare.
4. In the next section, we list the current recommendations which are prioritized. Recommendations categorised as high priority seeks to ensure a level playing field for retailers. Recommendations listed under low priority seek to address the ease of doing business and reducing uncertainties for both retailers and wholesalers. Overall, the revised recommendations, if implemented, could achieve greater efficiencies in the market, lower prices and increase choices to consumers.

II. Revised Code of Conduct for the Petroleum Industry

A. High Priority

1. A contract between a wholesaler and a retailer shall contain in clear and unambiguous terms the criteria upon which the wholesaler offers or grants discounts or price support to its retailers.
2. No contract between a wholesaler and a retailer shall be for less than three years, in respect of a company-owned retail outlet, provided that the retailer is not serving a probationary period which must not be more than one year.
3. No contract between a wholesaler and a retailer shall be for more than five years, in respect of a dealer-owned retail outlet.
4. No agreement for sale by a wholesaler of property housing a gasoline retail outlet shall contain provision prohibiting the buyer from operating gasoline retail outlet or any other business at that location, provided that said business is in accordance with the relevant Town and Country or any other zoning laws for the time being in force in Jamaica.
5. Gasoline retail outlets shall prominently display the prices of gasoline on both sides of a double-sided display board.
6. Prices on pumps shall be visible; and no price shall be displayed on pumps that are not operational
7. Prices displayed on pumps shall be identical to the prices displayed on the board.
8. Where a wholesaler grants discounts those discounts shall be made available to all retailers within its network of retail outlets, who meet the criteria under which discounts or price support are/is granted.
9. Where a wholesaler recommends or suggests the price at which gasoline should be retailed at a dealer operated outlet that price shall not be below the price, discounted or otherwise, at which it supplies another retail outlet within the same geographic market.¹
10. A wholesaler who operates a retail outlet directly or indirectly through an officer, agent or employee shall not retail gasoline at prices that do not allow for recovery of the operational expenses of retailing the gasoline.
11. Where a wholesaler recommends or suggests the price at which gasoline should be retailed at a dealer operated outlet that price shall not be below the cost of the gasoline together with the cost of supplying it.
12. A retailer who owns the property housing a retail outlet and who has entered into a contract with a wholesaler shall not be in any way prevented from switching to another wholesaler at the end of the contract provided, however, that the retailer has fulfilled all its obligations under the said contract.
13. At the end of a contract by effluxion of time, or where any party wishes to discontinue the contract, in respect of retailer-owned property, the wholesaler must remove its signage, logo, storage tank, etc within one week of the end of the contract.

¹ A geographic market is a geographic area in which suppliers compete.

B. Low Priority

14. A wholesaler shall not, directly or indirectly or through any officer, agent or employee in respect of sale and distribution of petroleum products:-
 - a. Fail to act in good faith in performing or complying with any term or provision of, or collateral to, a contract with a retailer;
 - b. Impose on a retailer any contractual provisions including a provision respecting an increase in rental for a gasoline retail outlet, that are likely to be impossible or unreasonably onerous to perform at the time it is demanded to be performed; or
 - c. Cancel, terminate or fail to renew a contract with a retailer for cause not contemplated in the relevant contract.
15. A wholesaler must give notice of no less than one month of any changes in the applicable rents and fees. Increases in such rents and fees shall not be made payable retroactively.
16. An existing contract between a wholesaler and a retailer, in respect of a company-owned outlet, excluding a probationary period, which is for a period less than three years, shall be pro-rated so as to comply with provision 2 herein.
17. An existing contract between a wholesaler and a retailer, in respect of a dealer-owned retail outlet and which is in excess of five years shall be pro-rated so as to comply with provision 3 herein.
18. All contracts must have a specified duration.
19. In any contract between a wholesaler and a retailer, where one party terminates the contract prior to the agreed termination date for the contract on the ground of any cause not contained in or recognised under that contract, then the terminating party shall compensate the other party for the unexpired term of that contract. The method for calculating the compensation shall be set out in the contract between the parties.
20. A minimum of three months notice shall be given by any party who wishes to end a contract before its expiration date.
21. Notice of renewal or non-renewal of a contract shall be given to either party three months prior to the end of the contract and the parties shall communicate to each other any new terms and conditions within the said time frame.
22. Prior to the commencement of a contract, a wholesaler shall advise retailers of the grounds for termination or non-renewal of that contract.
23. For the purpose of this Code, notice means notice in writing.
24. Any notice or demand to be served or made on any party shall be deemed to be sufficiently served or made if served personally or sent by pre-paid registered post addressed to the relevant party's address and shall be deemed to have been received seven days after date of posting in any post office in Jamaica. This method is not exclusive and shall be in addition to any other available procedure, inclusive of such notice being served on the Attorney representing a party to the contract, which shall be deemed notice to such party.

25. The layout of the display board shall be two columns by four rows. The first column shall list the type of gasoline in the order of unleaded 87, unleaded 90, diesel and ULSD; and the second shall display the corresponding prices.