

FAIR TRADING COMMISSION

ANNUAL REPORT  
Financial Year 2009/2010



*Ensuring a competitive marketplace*

## TABLE OF CONTENTS

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COMMISSIONERS .....	3
CHAIRMAN'S REMARKS .....	4
EXECUTIVE DIRECTOR'S REMARKS.....	5
ROLE AND FUNCTION.....	7
PRIORITY PROGRAMMES FOR FY 2009-2010.....	8
PERFORMANCE RELATING TO EACH PROGRAMME .....	9
1.0 Matters of Competition Significance .....	9
2.0 Dissemination of Information .....	13
3.0 Provide Guidance Local and Regional Institutions .....	21
4.0 Strengthen the Technical and Administrative Capacity.....	23
SUMMARY OF MAIN PROGRAMMES FOR 2010-2011 .....	27
BUDGETARY ALLOCATION .....	28

## COMMISSIONERS

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**Dr. Derrick McKoy** was appointed Chairman in February 2008. He served as a Commissioner from 1996 to 1998 and was Contractor-General of Jamaica from 1998 to 2005. He also serves as Chairman of the Jamaica Antidumping & Subsidies Commission. An attorney-at-law, Dr. McKoy has consulted in Jamaica and the broader Caribbean in the areas of competition law and policy, utilities regulations, and public sector reform.

**Dr. Peter-John Gordon**, an Economist, was appointed Commissioner in January 1996 and Chairman from 2002 to 2007. He was reappointed as a Commissioner in February 2008. Lecturer at the University of the West Indies between 1982 to 1986 and 1993 to 1999, he served in the post of Director, Economic Planning and Research at the Planning Institute of Jamaica (PIOJ) between 2000 and March 2009. He also worked with the Jamaica National Export Corporation (JNEC) holding various positions, which include Trade Commissioner to CARICOM.

**Mr. Jasper Burnett, C.D.**, a Chartered Accountant, has been Commissioner since June 1998. A member of the Public Accountancy Board since 1977, he served as President of the Institute of Chartered Accountants of Jamaica (ICAJ) between 1977 and 1980. He was a Council Member of the ICAJ from 1974-82 and is Founder and First Editor of the ICAJ's Magazine 'CHARTER'.

**Mrs. Dorothy Carter-Bradford** was appointed as a Commissioner in July 2008.

## CHAIRMAN'S REMARKS

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During the year the Fair Trading Commission (FTC) continued on its path of strengthening its technical capacity, primarily through the Inter-American Development Bank (IDB) project which began five years earlier. It is notable that of the US\$439,300 that was to be spent under the project, 85% of actual expenditure was used directly on capacity building activities; as significant savings were realized from measures implemented by the management team of the FTC. The team must be commended for their exceptional management abilities, from which the Staff and the institution will benefit for years to come.

The institution's growth was also evident from the several significant market studies and investigations which the Staff undertook. The distributive trade for groceries, health insurance and retail banking sectors are all very important to the citizens of our country; and it is for this reason, the FTC thought it necessary to examine the dynamics of each of these sectors.

Notably as well is the number of Government Ministries and Agencies with which we interacted with, on issues involving several sectors that are critical to Jamaica's growth. This is indicative of the role that the FTC must play as the country moves towards developing a more fruitful economy for us all. This is the path that the FTC has set and will continue to tread along in the years to come.

Derrick McKoy  
May 13, 2010

## EXECUTIVE DIRECTOR'S REMARKS

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The Financial Year saw the closing out of our capacity building project that was funded by the Inter-American Development Bank (IDB). The Project was of significance to the life and sustainability of the FTC as it focused on several infrastructural aspects of the Commission and impacted immensely on the work of the Staff through (a) Comprehensive training of technical staff resulting in more efficient use of resources, increased capacity to investigate, reduced time taken to investigate matters and increased ease of identifying potential breaches of the FCA; (b) Assistance in reviewing the Fair Competition Act (FCA); (c) the hosting of several outreach activities; (d) upgrading of the FTC's information technology systems; (e) acquisition of journals and books; and (f) acquisition of video conferencing equipment.

Engaging in competition advocacy and informing Government policy continued to be one of our priority areas as it is through such interventions that conduct which may limit the development of a competitive environment may be identified and treated in an appropriate manner. The FTC reviewed policies related to the agriculture, energy, gaming, health, housing, information communication and technology, manufacturing and tourism sectors as well as activities which are designed to facilitate commerce and trade.

In a similar vein, the FTC hosted or facilitated four very important events which highlight relevant competition related matters, and improve stakeholders' knowledge of competition issues. These were, a symposium entitled "Facilitating Competition through effective adjudication and enforcement"; our 6<sup>th</sup> Workshop for the Judiciary of the region which was conducted by Stephen Calkins, Professor of Law and Director of Graduate Studies at the Wayne State University Law School; our 10<sup>th</sup> Shirley Playfair Lecture which featured two presenters, Mr. Omar Azan, President of the Jamaica Manufacturers Association (JMA), and Mr. Declan Purcell, Director of Advocacy, Competition Authority of Ireland on "The relevance of Competition Law in good and not so good times"; and a Lecture presented jointly by Professor Lino Briguglio and Magistrate Silvio Meli of Malta's Commission for Fair Trading, the appellate body for competition matters in Malta.

Two industry studies on issues which affect consumers in their everyday lives directly were issued. The first on the market for basic food items which identified the reasons for the asymmetric price transmission mechanisms. The second industry study is instructive on the treatment of the operations of Government run business enterprises that compete with private enterprises that do not benefit from Government support. In our study on the operation of the National Solid Waste Management Authority (NSWMA) it was concluded that were the NSWMA to continue to operate in the market for collection of non-residential solid waste, there is likely to be further distortion of competition which may affect the viability of private enterprises in that market.

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In keeping with our policy programme of addressing markets where competition could be strengthened and the benefits of competitive markets can be demonstrated, work was started on another study that affects consumers in their everyday lives, that of the commercial banking sector. The results of this study will be released early in the upcoming Financial Year.

***David Miller***  
**Executive Director**  
May 4, 2010

## ROLE AND FUNCTION

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Established in 1993, the FTC administers the Fair Competition Act (FCA), which provides for the maintenance and encouragement of competition in the conduct of trade and business and in the provision of services in Jamaica, with a view to ensuring that markets are competitive and that consumers are provided with competitive prices and product choices.

In that regard, the functions of the FTC are to:

- Carry out on its own initiative or at the request of any person such investigations or inquiries in relation to the conduct of business as will enable it to determine whether any enterprise is engaging in business practices which contravene the FCA.
- Carry out investigations that may be requested by the Minister or that it may consider necessary or desirable in connection with competition matters.
- Advise the Minister on such matters relating to the operation of the FCA, as it thinks fit or as may be requested by the Minister.

The FCA authorizes the Commission to obtain such information as it considers necessary to carry out the functions listed above; and makes it an offense if one fails to provide the Commission with information when requested to do so; or to obstruct an investigation by destroying evidence or by knowingly providing false or misleading information.

## **PRIORITY PROGRAMMES FOR FY 2009-2010**

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For the Financial Year 2009-2010, the FTC set the following four broad programmes as its main priorities:

1. Focus increasingly on matters that raise competition concerns in markets, thereby encouraging competitive markets and improving consumer welfare.
2. Disseminate information to all relevant stakeholders on matters of competitive significance.
  - Issue advisories, opinions, guidelines, publications; and execute media campaigns.
  - Organize seminars, workshops and meetings specifically with manufacturers and distributors on how to identify the various offences against competition.
  - Continue to collaborate with the Office of Utilities Regulation, as well as the Telecommunications department of the Office of the Prime Minister, to promote competition in the telecommunications industry.
  - Participate in, and organize appropriate forums for policy makers within the public sector as well as the Judiciary, to strengthen their appreciation of competition issues in their decision and law making processes.
3. Provide guidance to the Ministry of Foreign Affairs & Foreign Trade and CARICOM on issues relating to competition law and policy within the region.
4. Continue to improve the technical and administrative capacity of the Staff.

## PERFORMANCE RELATING TO EACH PROGRAMME

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### 1.0 Matters of Competition Significance

#### 1.1 Complaints Handled

Over the period April 1, 2009 to March 31, 2010, a total of 424 matters were investigated by the FTC, with 266 being completed and closed. This represents a resolution rate of 63%. Of the 424 matters, 215 were brought forward from the previous period, while 209 represent complaints received during the period April 1, 2009 to March 31, 2010.

Of the 209 complaints received during the year under review, 151 (72%) were classified as matters concerning Misleading Advertising (MA); 13 were (6%) classified as offences against competition; and six were classified under other sections of the FCA. Thirty-nine (19%) complaints were considered as being outside the purview of the FCA. Those matters were therefore transferred to the relevant agencies, where appropriate.

The table below provides a breakdown of the number of complaints received, categorized by industry.

Industry Category	No. of Complaints received	Percentage of total received
Telecommunications	59	28.2
Household appliances and supplies	26	12.4
Motor Vehicles	20	9.6
Financial & insurance services	18	8.6
Real estate & construction	15	7.2
Education	15	7.2
Professional services	8	3.8
Transportation	6	2.8
Government services	5	2.4
Other	37	17.8
<b>TOTAL</b>	<b>209</b>	<b>100</b>

## 1.2 Court Matters

- Bent/Speare Entertainment Limited

In accordance with the terms of the Consent Order Bent/Speare Entertainment Limited paid the FTC's costs amounting to \$437,000 and issued a Public Apology in the Daily Gleaner newspaper.

The case stemmed from two complaints received in December 2006. The informants, both alleged that the Respondent had scheduled a concert titled 'Welcome to Jamrock' to be held on December 22, 2006 at the Constant Spring Football Field. The Respondent advertised that 'Advanced VIP' tickets were being sold for \$3,000 and VIP tickets would be sold at the gate for \$3,500. Both Informants alleged that, in fact Advanced VIP tickets were being sold for \$3,500. Following its investigations, the FTC issued a directive that Bent/Speare sell pre-sold tickets at the price advertised. Bent/Speare complied with the directive.

Recognizing that harm had been done, the FTC filed suit on February 7, 2007, for breach of Section 37 of the FCA in the Supreme Court; and on November 19, 2008, the Supreme Court of Jamaica issued a Consent Order.

## 1.3 Consent Agreement

- University of Technology Jamaica

The University of Technology Jamaica (UTECH) in promoting the '**UTech Track and Field Classic 2009**' held at the National Stadium on Saturday, April 18, 2009, had advertised that several Olympic stars including Asafa Powell, Shericka Williams, Andrew Hines, Darrel Brown and Marvin Anderson would be featured. These athletes however, did not participate in the games.

The FTC conducted an investigation and concluded that UTECH's conduct constituted a breach of Section 37 of the FCA which prohibits enterprises from making to the public, representations that are false, misleading or likely to be misleading.

Upon informing UTECH that it had breached the FCA, UTECH acknowledged that its actions were likely to have misled members of the public. The FTC exercised its discretion to discontinue the investigation and settle the matter in accordance with the *Fair Competition (Notices and Procedures) Regulations 2000*. A Consent Agreement was therefore entered into; requiring that UTECH issue a public apology in the Sports Section of a national newspaper for two consecutive weeks and to pay the FTC's costs of \$124,000.

## 1.4 Industry Studies

### ▪ Distributive Trade

In April 2009, the FTC completed a study of the distributive trade, specifically the market for basic food items. The purpose of the study was to identify the reasons for the asymmetric price transmission (APT) mechanisms in the markets for basic food items distributed in Jamaica.

The two main conclusions are as follows:

- i. The asymmetric price transmission may be the result of anticompetitive conduct.
  - More than a half of the respondents are members of at least one trade association or club. This is a factor that can facilitate collusive practices – joint determination of business decisions among rival enterprises.
  - There is (unsubstantiated) allegation of resale price maintenance in the distribution of bread.
  - There is unsubstantiated evidence of resale price maintenance on the part of Progressive Grocers' Group.
- ii. The asymmetric price transmission may also be the result of an unpredictable business climate.
  - The relative instability of the Jamaican dollar may have contributed to the APT observed in the distribution of basic food items. For example, during the period January through June 2008, which corresponds to the period when prices on the international market were rising significantly, the Jamaican dollar depreciated by approximately 2 percent; in contrast, during the period July through December 2008, which corresponds to the period when "international prices" were declining, the Jamaican dollar depreciated by an even greater amount, that of approximately 12 percent.

### ▪ Health Insurance

The FTC started a study of the health insurance market. The objective is to measure the impact on competition on the consolidation of Blue Cross Jamaica Limited and Sagicor Life Jamaica Limited. Specifically the study is to determine whether the consolidation would result in higher prices to consumers and or reduced product choices and quality.

### ▪ Retail Banking

The FTC began a study of the commercial banking sector. The objectives are to (1) characterize the extent of information asymmetry on the part of consumers of retail banking services; (2) characterize the costs which are likely to be faced by consumers in switching from one bank to another; (3) recommend measures to mitigate the adverse effects, if any, of the factors identified in (1) and (2).

Data will be gathered directly via interviews/questionnaires from the main stakeholders in the industry, i.e. consumers, commercial banks and regulatory bodies. Survey instruments are being designed to capture information such as:

- the costs associated with switching banking service providers;
- service features;
- advice and assistance offered to consumers;
- access to and flexibility of service;
- reputation or credibility of the banks;
- whether and the extent to which the banks contribute to consumer ignorance and switching costs;
- the main channels through which consumers acquire information on retail banking services;
- the main channels through which consumers are provided with information; and
- the types of information provided by the banks.

For funding for the study, the FTC submitted a research proposal to the International Development Research Centre (IDRC) for a grant of Cad\$40,000. The proposal has been short-listed for one of the competitively awarded grants on offer to competition authorities in developing countries.

### **1.5 Major investigation completed**

#### ▪ Non-residential solid waste haulage

The FTC concluded its investigation into the operation of the National Solid Waste Management Authority (NSWMA) and its four regional bodies, regarding the haulage of non-residential solid waste. The final report was sent to the Department of Local Government, which has oversight responsibility for the NSWMA, as well as to NSWMA and the Ministry of Industry, Investment & Commerce.

The investigation was triggered from complaints from several private firms which haul non residential solid waste. Specifically, the Informants claimed that private non-residential solid waste enterprises are placed at a competitive disadvantage as the NSWMA is afforded certain privileges that are unavailable to the private entities with which the NSWMA compete.

Given that NSWMA is a statutory monopoly with respect to the haulage of residential solid waste; and is the sole operator of the approved dump sites in Jamaica, the investigation was carried out in reference to Sections 19-21 of the Fair Competition Act which address the conduct of dominant enterprises.

NSWMA has indicated that the resources provided by the government are insufficient to adequately and effectively deal with the collection and disposal of residential solid waste; and therefore the income generated from the non-residential garbage collection operation is used to supplement its residential operation. There is, however, no evidence that its operation in

the market for non-residential solid waste haulage is profitable, so as to improve its provision of service in relation to the haulage of residential solid waste.

While it was found that NSWMA is unlikely to be dominant in the market relating to non-residential waste haulage, there is concern that as it expands its operation in that market there is likely to be further distortion of competition. Further, the expansion of NSWMA in that market is likely to negatively affect the quality of service (frequency of collection) with respect to the collection and transportation of residential waste, if there is continued opportunity for resources to be diverted from the residential operation to the non-residential operation.

To restore the competitive environment, the FTC has recommended that, if the state is going to be involved in the commercial operation of collecting non-residential waste, in competition with the private sector, then necessary infrastructure must be established, so as to separate the residential waste operations from the non-residential waste operations. It is further recommended that the commercial unit must operate independently of the Government.

## **2.0 Dissemination of Information**

### **2.1 FTC events**

During the review period the FTC hosted or facilitated four very important events, to highlight relevant competition related matters, to strengthen the target groups' appreciation and improve their knowledge of competition issues. The events were:

#### Symposium

On July 16, 2009, the FTC held a symposium entitled "*Facilitating Competition through effective adjudication and enforcement*", in order to revisit the arguments and solicit views from the public as to the most appropriate body to determine alleged contraventions of the FCA at first instance.

The objective was to air the different factors that ought to be considered in deciding on the most optimal structure, to discuss these factors with policy makers and stakeholders, and to create a document that encompasses all considerations. We anticipate that this document will inform policymakers and other entities which face similar challenges as the FTC, of the necessary considerations that should influence their decisions in similar or related matters.

The Honourable Mr. Justice Forte, P., as he then was, in the ***Jamaica Stock Exchange v. Fair Trading Commission case***<sup>1</sup> highlighted factors which, in his view, rendered the existing adjudicative process a breach of natural justice. From his judgment, the following challenges relating to the FCA were identified:-

- The FCA merges the investigative and adjudicative functions in the same body;
- The FCA does not allow the Commission to delegate its functions; and

- The FCA allows the Commission to arrive at a finding without being mandated to give individuals who may be affected by its decision an opportunity to be heard.

The effect of the *Jamaica Stock Exchange* appears only to relate to those relatively few provisions of the FCA in which the Commission would be required to make a finding - ss.19-21 and 33. Under the present construction of the FCA, all other contraventions are determinable at first instance by the courts.

Three positions were ventilated. While the presentations contained points of consensus, they constituted distinct suggestions as to how to best meet the current challenges. The first, presented by Mr. B. St. Michael Hylton, QC, supported the establishment of an independent specialist tribunal to determine all matters falling under the FCA; the second, presented by Commissioner Dr. Peter-John Gordon, that the Commissioners and the courts continuing to make findings or determinations under the applicable sections; and the third, that all matters should be determined by the courts, was presented by Chairman Dr. Derrick McKoy.

Twenty-six persons attended the event, including representatives of the business community, law firms, academia, the Office of Utilities Regulation, the Attorney General's Chambers and the MIIC. The papers presented are available at [www.jftc.gov.jm](http://www.jftc.gov.jm); and was published in the June 2010 issue of the West Indian Law Journal.

#### Workshop for the Judiciary

On July 18<sup>th</sup> and 19<sup>th</sup>, 2009, the FTC hosted its 6<sup>th</sup> Workshop for the Judiciary of the region. It focussed on Restrictive Agreements - Vertical and Horizontal arrangements, and the areas covered included the concept of agreements in vertical relationships, evaluation of indirect evidence of cartel agreements and facilitating practices among competitors.

The Workshop was conducted by Stephen Calkins, Professor of Law and Director of Graduate Studies at the Wayne State University Law School. Thirteen persons attended – eleven Jamaican Judges, including the Honourable Chief Justice Zaila McCalla, one judge from the Eastern Caribbean Supreme Court, and the Executive Director of the CARICOM Competition Commission. It was considered by all participants to be very informative and beneficial; and they all indicated that workshops of this nature should be held on a continuous basis.

The event was funded under an Inter-American Development Bank (IADB) Project aimed at building the technical capacity of the FTC as well as increasing the awareness and knowledge of key participants in the process of Competition Law enforcement.

#### 10<sup>th</sup> Annual Shirley Playfair Lecture

The 10<sup>th</sup> Lecture in the Shirley Playfair Lecture Series was held on September 10, 2009. The Presenters, Mr. Omar Azan, President of the Jamaica Manufacturers Association (JMA), and Mr. Declan Purcell, Director of Advocacy, Competition Authority of Ireland presented their views on "*The relevance of Competition Law in good and not so good times*".

The event started with Chairman Dr. Derrick McKoy's Welcome and Opening Remarks, and this was followed by the Honorable Karl Samuda, Minister of Industry Investment & Commerce, who spoke briefly on some of the challenges in facilitating and developing industry and business since the current economic crisis, which began in 2008.

Mr. Azan's presentation was entitled "*The Pros and Cons of Protecting Local Manufacturers in Light of the Current Challenging Economic Times, while at the Same Time Recognizing the Importance of Competition in the Market Place*". It spoke primarily about the benefits to our country for supporting local manufacturing enterprises and the challenges being faced by manufacturers. He described a few of the ongoing difficulties of the JMA which have been "amplified by the economic recession". Mr. Azan stressed the need for Government to play a greater role in facilitating the manufacturing sector and after acknowledging the initiatives that had been implemented in recent times he offered suggestions that should serve to drive competition and growth within the sector even further.

On the other hand, Mr. Purcell engaged the audience in a discussion that emphasized the benefits from enforcing Competition Law irrespective of the economic climate, illustrating his views with several examples from his country. His presentation, entitled "*Competition Policy in Good Times and Bad Times – the Role of Competition Advocacy*" illustrated some of the many benefits of competition law to policymakers, the business community and society more widely; emphasizing that especially in times of crisis, "there is a need to show our Governments, businesses and consumers, that an active competition policy will help to pull us out of this crisis".

The presentations led directly into a vibrant discussion where several persons from the business community had their issues addressed by both presenters. In addition, the audience became engulfed in a broader discussion on the benefits to be derived from competition and a 'non-protectionist' approach by Government in stimulating business in both the local and overseas markets.

The Jamaica Information Service (JIS) and Power 106 FM played an integral part in publicizing the event. In the hour preceding the Lecture, both Chairman McKoy and Mr. Purcell were interviewed on Power 106 FM's radio talk show "*Both Sides of The Story*", hosted by Mr. Dervan Malcolm. Mr. Azan was also interviewed on the show which was carried live on the radio and on the internet.

This was the first occasion that the Lecture was taken live and excerpts of not only the featured presentations but also the Chairman's Opening Remarks, Minister Samuda's comments and the Executive Director's closing remarks were carried live on the radio.

Other activities involved in the promotion of the Lecture include an appearance by the Executive Director on the radio talk show *Balancing Justice*; and Mr. Purcell being interviewed on *Independent Talk*, as well as on JIS's television programme *Issues and Answers*.

## Lecture – Faculty of Law

The FTC facilitated a lecture at the Faculty of Law in February 2010. Presentations were made by Professor Lino Briguglio and Magistrate Silvio Meli of Malta’s Commission for Fair Trading, the appellate body for competition matters in Malta. Both persons visited the FTC to gain insight into the manner in which competition law is enforced in Jamaica and cooperation mechanisms with other competition agencies of the region.

### **2.2 FTC Publications**

In addition to the four events, the FTC published its annual magazine and quarterly on-line newsletter, during the review period.

- *Competition Matters 2009* — the 14<sup>th</sup> issue of the FTC’s annual magazine was published in December 2009 and distributed to approximately 700 persons, both locally and overseas. The theme of the 36-page magazine is *Competition in Crisis*; and it featured articles from the FTC, the Planning Institute of Jamaica, the Ministry of Tourism, the Ministry of Industry, Investment & Commerce and the Private Sector Organization of Jamaica.
- *FTC Newslines* — launched early in the Financial Year, this on-line quarterly newsletter contains information on competition matters dealt with by other 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.

### **2.3 FTC Other Outreach Activities**

1. On April 16<sup>th</sup>, the Executive Director was guest speaker at the Rotary Club of Kingston’s luncheon where he spoke on “*Staying Afloat in Turbulent Times; the Importance of Competition Policy*”. The presentation looked at some of the benefits which firms can enjoy when they operate in highly competitive markets; the importance of robust enforcement of competition laws in these challenging economic times; and Government Ministries and Agencies’ collaboration and creation of synergies to maximize output given limited resources.

Excerpts from the Luncheon were televised on TVJ and an interview with the Executive Director was aired on the same station.

2. Staff of the FTC was interviewed on several radio stations regarding the FTC’s investigation into the no show by several athletes at the UTECH Track & Field Classic 2009. The fact of the no-show was the subject of a few newspaper articles and sports radio talk shows.

3. Senior Legal Counsel participated in a Public Forum entitled "*The Role of the Fulbright Programme in Promoting Nation-Building in Jamaica*", organized by the Jamaica Fulbright-Humphrey Alumni Association in association with the Embassy of the United States of America. His presentation focused on the role of the FTC in promoting consumer justice.
4. The Executive Director and the Competition Bureau Chief met with the Head of the Department of Economics of the University of the West Indies to discuss the likelihood of including a course on Competition Law & Policy in the curriculum of UWI's BSc Economics programme. The proposed course content and syllabus are designed by the FTC. Since 2006, the FTC has conducted a course in the LLB programme at the Cave Hill campus of the University of the West Indies.
5. On June 5, 2009 the Financial Gleaner published an FTC article entitled "The Role of Competition in National Development". The article spoke of the negative effective on consumer welfare of maintaining the Common External Tariff (CET) on imported cement; and made reference to the FTC's study on the Cement market, in which it was found that the lowering of the tariff had actually stimulated competition from imported cement which effectively resulted in a lowering of the market price of cement. The study estimated that consumers saved in excess of \$694 million during the period in which the CET was removed.
6. On June 20, 2009, the Executive Director spoke at the Jamaican Bar Association's Continuing Legal Education Seminar on the "*The Interface between Competition Law & Regulation*". The theme of the Seminar was "Regulatory Oversight of Commercial Activities – Legal Perspectives".
7. The FTC released its new slogan "***Ensuring a Competitive Marketplace***", which replaces "*A Fair Deal, Your Right by Law*". The new slogan more accurately reflects the role and functions of the FTC, as a competition law enforcement agency with an emphasis on the nature and extent of rivalry among competing enterprises.
8. On March 12, 2010, a Legal Officer participated in the Jamaicans for Justice's radio talk show – *The Community Lawyer*. The discussion centered on World Consumer Rights Day.
9. The FTC made four presentations to the staff of Nestle Jamaica Limited on the role and function of the FTC and the responsibilities of firms as outlined in the Fair Competition Act (FCA). Practical applications of the FCA and examples of anticompetitive behaviour in other jurisdictions, were discussed. The audience included persons at all levels of Nestle, including the management team and the marketing department.

The full text of the speeches and presentations are posted on the FTC's website: [www.jftc.gov.jm](http://www.jftc.gov.jm).

## 2.4 Competition advocacy: informing government policy

The FTC's advocacy efforts took various forms with several policy makers and Government Departments. Among them were:

### ***Agriculture***

- Participated in discussions with the Ministry of Agriculture and Fisheries regarding their plans for modifying the criteria for setting the conch quota. The issues in determining the criteria have implications for competition in that sector.

### ***Commerce***

- Participated in the series of workshops hosted by the Jamaica Intellectual Property Office (JIPO), on the Administration of an Effective Geographical Indications System.
- Submitted to the MIIC, the FTC's view on whether the FTC and the Anti-Dumping & Subsidies Commission should be merged to form one entity. The paper looked at the differences in scope and objectives of both organizations; described the merits and demerits of merging the two entities; and concluded that the benefits to be realised from merging are far outweighed by the potential losses from doing so. See [www.jftc.gov.jm](http://www.jftc.gov.jm).
- With respect to the rates of duty being charged on imported tyres, submitted to the MIIC, our recommendation that the rates of duty for imported new tyres and imported used tyres that are not subject to any manufacturing process before distribution, should be adjusted such that they are equivalent.

The current position is that "used tyres, whether imported for retreading, remoulding **or for any other purposes** have been assigned a zero percent rate of duty". The words, '*for any other purposes*', have been interpreted by the Customs Department to include used tyres designated for resale. The effect on the market is that this policy could distort competition in the market for tyres, by affording one group of suppliers a cost advantage over their rivals. Any advantage gained by an enterprise that is not as a result of that enterprise being more efficient than its rivals, will lead to market distortion, which ultimately harms consumers.

- Recommended to the Ministry of Finance & the Public Service that there should be no disparity in duty concessions granted to operators in the market for rent-a-car services. We were informed that members of the Jamaica U Drive Association were awarded a 30% duty concession on the purchase of new vehicles, while non-members were granted 15%.

Our interest in this matter is that the charging of different rates of duty on similar vehicles for the same purposes, could distort competition in the market for rent-a-car

services, by affording one group of service providers with a cost advantage over their rivals. All other things being equal, suppliers which benefit from preferential treatment will have a competitive advantage over suppliers which do not benefit from such treatment.

### **Energy**

- Continued to participate in discussions on the revision of the existing Energy Policy.

### **Gaming**

- Participated in a meeting of the Special Select Committee of Parliament that was reviewing the proposed amendments to the Betting Gaming & Lotteries Act. The FTC subsequently submitted its opinion to the Office of the Prime Minister on the “Competition Implications of Commingling Arrangements on Local Horse-Racing”. See [www.iftc.gov.jm](http://www.iftc.gov.jm).

### **Governance**

- Commented on specific sections of the E-Government Procurement Roadmap & Implementation Strategy, upon the request of the Ministry of Finance & the Public Service.

### **Health**

- Submitted to the Council for Professions Supplementary to Medicine which is a statutory body operating under the aegis of the Ministry of Health, its opinion on the Council’s “Guidelines for Advertising” for specified health professionals; and whether the Guidelines accord with the requirements of the FCA. The professions that are regulated are Medical Laboratory Technology, Radiography, Physiotherapy, Occupational Therapy, Medical Dietetics/Nutrition and Dietetic Assistants.

In addition to advising on the focus of competition law as it relates to advertising, the FTC also commented on the Guidelines’ definition of advertising which was thought to be somewhat ambiguous and open to challenge as well as several clauses which were unclear and potentially in breach of the FCA and/or the Consumer Protection Act (CPA).

### **Housing**

- Participated in the Ministry of Water and Housing’s Technical Consultation Session on the National Housing Policy and Implementation Plan – a plan which looks at several aspects of Jamaica’s housing needs for the next 20 years and puts forward proposals for handling the needs.

### **Information Communication & Technology (ICT)**

- Commented on the international submarine cable landing and voice/data/transit carrier Licence which was issued to Fibralink Jamaica Limited several years ago. The OPM was considering the issuing of new licenses and/or the revision of the existing licenses and the FTC made recommendations as to the conditions that should be attached to the

granting of Carrier Licenses with a view to enhancing competitiveness in the telecommunications sector.

- Participated in 'working' sessions of the Information and Telecommunications Department's Retreat. The FTC addressed the competition-related issues on several new initiatives and on-going plans of the agencies of that Department.
- Participated in several meetings of the Regulatory Agencies including the Broadcasting Commission, Spectrum Management Authority, Central Information Technology Office, Office of Utilities Regulation and the Office of the Prime Minister. The purpose is to finalize Jamaica's ICT Policy and to facilitate information sharing among regulatory bodies. Policy related discussions centered on Digital Switch Over, resource sharing between Agencies, major challenges being faced by the Agencies; advocacy activities; and establishing links with the relevant Ministers with portfolio responsibility.
- Participated in a meeting with the Hon. Prime Minister, at which several aspects of the ICT sector and the February 2010 version of the draft ICT Policy was discussed. With respect to the FTC, the discussions centered on how best to handle competition issues as Jamaica seeks to maximize its returns from the ICT sector.

### ***Manufacturing***

- Submitted to the MIIC a policy paper which examined the effects of the Common External Tariff (CET) on Competition Policy and competitiveness with respect to the cement market in Jamaica. It also examined several options that are available to the Government for ensuring competitiveness in that market. We also submitted a Sensitivity Analysis to inform policy-makers' decision in establishing the appropriate level of CET on imported cement without unduly hindering the competitiveness of the market. The specific objective was to estimate the *reservation tariff*, i.e. the maximum level CET that could be imposed without foreclosing the market to importers.

### ***Tourism***

- Conducted a study on the Competitiveness of Jamaica's Tourism Sector. The study compared Jamaica with other Caribbean and Latin American destinations and itemized the factors that should improve Jamaica's competitiveness. See [www.jftc.gov.jm](http://www.jftc.gov.jm).
- Commented on the Ministry of Tourism's proposal to establish an educational campaign to promote the participation of the tourism industry workers in pension and retirement schemes.

## **2.5 Speeches and presentations**

1. The Senior Legal Counsel of the FTC presented a paper at the ACP Dialogue on Legal and Systematic Issues in the EPAs, in Dakar, Senegal. The paper entitled "*Article XXIV of GATT and Tax Implications of EPAs*" looked on the content, duties and other

regulations and implications related to the creation of the EPAs, trade diversion and scope of possible compensation.

2. The Senior Legal Counsel also participated in the Regional Seminar on Trade & Competition, hosted jointly by the Latin American & Economic System (SELA) and UNCTAD, in Caracas, Venezuela, where he presented a paper entitled *“Enforcement of Competition Law in CARICOM: Perspectives on challenges to meeting Regional and Multilateral Obligations”*.
3. The Executive Director presented a paper entitled *“The Enforcement of Jamaica’s Competition Law”* at the Caribbean Law Institute Centre Inaugural Symposium: Current Developments in Caribbean Community Law in the session on Capitalism and Governance: The Regulation of Competition within the Community. The Symposium which was held on November 10<sup>th</sup> and 11<sup>th</sup> in Trinidad & Tobago, is described as “an annual high level forum for discussion of current or controversial developments in the law relating to or affecting the Caribbean Community and its Member states”. More information on the Symposium can be found at <http://www.cavehill.uwi.edu/clic/symposium>.
4. The Executive Director participated in the 8<sup>th</sup> Annual International Competition Network (ICN) Conference, in Zurich, Switzerland. As an active member of the ICN, the FTC participated in the discussion panels and made presentations in two sessions, the Advocacy Working Group session which looked at the use of market studies as an effective tool; and the Focus Group on Maximizing the Network effects of the ICN.
5. The Competition Bureau Chief conducted the Economics module of the Competition Law Course which is a part of the curriculum of the LL.B. programme of the Cave Hill campus, University of the West Indies. He had also conducted the module in February 2007 and February 2009.

In all instances the FTC’s participation was funded in full by the respective organizers. Further, all presentations have been posted on the FTC’s website, located at [www.jftc.gov.jm](http://www.jftc.gov.jm).

### **3.0 Provide Guidance Local and Regional Institutions**

1. Submitted comments on the Competition provisions contained in the Implementation of CARIFORUM-EC Economic Partnership Agreement to the Ministry of Foreign Affairs & Foreign Trade. The comments centered on Articles 90 and 125 to 130 of the Agreement.

2. The Senior Legal Counsel made a presentation to a delegation from Haiti on the role and functions of the FTC. The presentation included a description of the manner in which the FTC operates; the types of cases which have been dealt with; some of the research work which have been conducted; and the FTC's role as competition practitioners and advocates.

This was a part of the CSME Haiti Component of the CARICOM/CIDA Trade & Competitiveness Project.

3. Staff members of the FTC met with a consultant hired by the CARICOM Secretariat to review the existing communication methods on the implementation of various CSME initiatives; the objective being to improve communication methods and tools.
4. The Executive Director presented the FTC's views to the session on the Benefits of Competition Policy in the CSME Unit's Newspaper Editor's workshop hosted by the CARICOM Secretariat on October 22<sup>nd</sup> and 23<sup>rd</sup> at the Jamaica Pegasus Hotel. The objective of the workshop was to provide information on the CSME using the media as the vehicle for information dissemination. Other members of the panel were a Commissioner of the CARICOM Competition Commission, the Managing Director of the RJR Communications Group and a senior representative of the OECS Secretariat.
5. Participated in discussions and submitted an opinion to the CARICOM Secretariat regarding its study on the treatment of monopolies in the CARICOM Single Market & Economy (CSME). The objective is to provide COTED with recommendations for the harmonization of policy and rules for the treatment of monopolies within the CSME.
6. The FTC submitted its presentation entitled "*Jamaica's Experience & Benefits: Competition Law Administration*", to a Workshop on Competition Law & Policy in the CSME and the launch of the Guyana Competition Commission, in Georgetown, Guyana.
7. Submitted comments to the Ministry of Foreign Affairs & Foreign Trade, on the sections of the CARICOM/Canada Trade & Development Agreement negotiations that speak to competition policy, monopolies and state enterprises. The FTC has been participating in discussions on the Agreement since 2008.
8. The Executive Director participated in the CSME Unit's Competition and Consumer Welfare Workshop on March 18, 2010 in St. Kitts & Nevis; where he presented a paper entitled "*Consumer Welfare within Competition Policy – Institutionalizing Competition in the CSME*". Other participants included the Chief Executive Officer of the Consumer Affairs Commission, the Executive Director of the CARICOM Competition Commission, the Executive Director of CROSQ as well as representatives of the OECS Secretariat and the Attorney General's Department of St. Kitts & Nevis.

Of note is that a similar presentation was made on behalf of the FTC at another CSME workshop, held in Antigua & Barbuda on March 16<sup>th</sup>. Both presentations are available on our website – [www.jftc.gov.jm](http://www.jftc.gov.jm). These events are organized by the CARICOM Secretariat as a part of its programme aimed at sensitizing member states on competition and consumer issues.

#### **4.0 Strengthen the Technical and Administrative Capacity**

##### **4.1 Training**

1. A Legal Officer attended a four-day workshop on consumer protection hosted by the United States Federal Trade Commission and the Caribbean Consumer Council.
2. The Chairman and Senior Technical Staff participated in a Workshop on Competition Law & Policy in Small States, held in Barbados. The Workshop was hosted by the Sir Shridath Ramphal Centre for International Trade Law Policy and Services jointly with the Small States Network for Economic Development. Other participants included Commissioners and Senior Staff of the Barbados Fair Trading Commission, and representatives of the portfolio Ministries for Guyana and Trinidad & Tobago, as well as the OECS.

The matters discussed included Institutional Design and Strengthening; Challenges faced by Small States and Developing Countries; Implementation challenges for regional enforcement; Intra-EU Cooperation Mechanisms; and Procedures for Cooperation between the CARICOM Competition Commission and national jurisdictions. Several international experts in Competition Law and Policy as well as representatives of UNCTAD, the United Kingdom's Office of Fair Trading, Estonian, Maltese and Cyprus Competition Commissions, shared their experiences.

In all instances participation was funded by external sources.

##### **4.2 Legislative process**

There are no further developments in respect of the establishment of Regulations under Section 40 of the FCA; nor has the process of amending the FCA (Notices and Procedures) Regulations been advanced. Both of these pieces of work, together with enactment of regulations regarding the FTC's investigative and hearing procedures are being addressed through the establishment of a Competition Tribunal to hear competition cases.

The second draft Bill containing the relevant proposals for amending the FCA was issued by the Chief Parliamentary Council (CPC) and reviewed by the FTC during the Financial Year. Comments were forwarded to the CPC through the Ministry. Recommendations include:

1. That the Tribunal and the Courts be given the power under the FCA to issue the following types of remedial measures:
  - Orders to terminate, modify or nullify agreements, conduct, activities or decisions which are found to be in contravention of the FCA;
  - Orders requiring the enterprise to take such steps as are necessary to overcome the effects of the anti-competitive conduct on the market(s);
  - Orders requiring the compensation to persons affected by the anti-competitive conduct; and
  - Orders imposing fines (which are calculated based on the gains from the illegal activity).
2. Remedies available to the Courts should be as or more stringent than that of the Tribunal. Given such a scenario, a Respondent would only appeal a ruling if it feels it has a real chance of getting the Tribunal's ruling overturned.
3. If the Tribunal is not given the power to order compensation or levy fines then a dual-tiered enforcement regime be maintained. Under this regime the Courts would be the arbiter of first instance in matters which directly affect consumers such as cartelization and misleading representation. All other matters would be brought before the Tribunal.
4. The requirement for the Commission to report to the Tribunal should be removed. Instead, the Bill should seek to establish a relationship between the two entities which is similar to that of a prosecutor and the Courts. This would require that the Commission only interact with the Tribunal in cases where it has found a breach and has failed to enter into a consent agreement with the Respondent(s).

Of note is that the version of the FCA and accompanying explanatory notes that was developed by an overseas Consultant hired under the Inter-American Development Bank (IDB) Project, served as a useful guide in finalizing the FTC's comments to the CPC. The Consultant identified gaps and potential weaknesses in the draft Bill and presented the FTC with workable suggestions.

### **4.3 Funding**

#### *Inter-American Development Bank (IDB)*

The three (3) year IDB Project was completed during the 2009-2010 Financial Year. The purpose of the project was to strengthen the technical capacity of the FTC to be an effective enforcer of competition policy in Jamaica; and to better inform economic actors about the criteria and enforcement mechanisms of competition policy and the importance of competitive markets. Based on the performance of the FTC during the project period, specifically in achieving mid-term targets and expenditure savings, the IDB maximized the project's output and impact by extending the initial project period by 18 months. All activities outlined in the original workplan were undertaken satisfactorily and within or under budget; and a number of

other related activities were undertaken from savings from the original budget. The IDB is satisfied with the management of the project, in that all targets were met.

Discussions in the project's Closing-Out Workshop focused on project performance and achievements, the established project logframe, performance against indicators, the goal and purpose of the Impact Assessment, external factors that affected performance, performance against original schedule & budget, and sustainability & outlook. In addition to representatives of the IDB and FTC, participants included representatives of the MIIC, OUR and a Judge of the Supreme Court of Jamaica, the Judiciary being a beneficiary of the project.

Following are the main achievements:

1. *Comprehensive training of technical staff*— Through the hiring of two competition law experts who conducted training sessions, the technical staff was exposed to best practices for the enforcement of competition law and the procedures for the identification, assessment, preparation and presentation of cases. The consultancy also provided for the development of the FTC's case selection criteria, investigation manual and procedures and guidelines.

The training and resources documents have resulted in:

- More efficient use of the Commission's resources
- Increased capacity to investigate
- Reduced time taken to investigate matters
- Increased ease of identifying potential breaches of the FCA

2. *Assistance in reviewing, for amendment purposes, the Fair Competition Act*— A draft version of the FCA with accompanying explanatory notes was produced by an overseas consultant with expertise in both competition law and legislative drafting.
3. *Outreach activities*— The project facilitated 4 public lectures; 3 workshops for the judiciary, publication of several articles in the newspapers, publication of 3 issues of the FTC's annual magazine; airing of several radio programs.
4. *Upgrading of the FTC's case workflow system*— The upgraded case management system and information technology platform provides the FTC with appropriate tools to facilitate case investigation and management reporting. Several improvements to the FTC's network environment were done and the entire lotus notes platform was upgraded.
5. *Acquisition of journals and books*— The project allowed for the purchasing of thirty-three books and subscriptions on various aspects of competition law.
6. *Acquisition of video conferencing equipment*— Used to communicate with overseas Consultants for cases and training; and to participant in webinars and teleseminars.

The following tables compare the approved budget with actual expenditures.

**Table 1a: Approved budget**

Investment category	IDB Budget	GOJ Budget	Category as percentage of total budget
Component I	219,000	69,300	65.6%
Component II	50,000	16,000	15.1%
Operational & Admin.	0	45,000	19.3%
Mid Tem & Final Evaluation	20,000	0	
Audit	4,000	0	
Contingency	11,000	5,000	
Total	304,000.00	135,300.00	439,300.00

**Table 1b: Actual expenditure**

Investment category	IDB Actual	GOJ Actual	Category as percentage of total
Component I	209,064.58	76,070.60	65.0%
Component II	72,904.68	14,825.49	20.0%
Operational & Admin.	0	41,893.80	15.0%
Mid Tem & Final Evaluation	10,721.76	0	
Audit	7,114.39	0	
Contingency	4,194.59	1,765.89	
Total	304,000.00	134,555.78	438,555.78

It is to be noted that whereas 80.7 percent of the approved budget was earmarked for capacity building activity, 85 percent of actual expenditure was used for this purpose, as there were savings in the amounts designated for project management.

## SUMMARY OF MAIN PROGRAMMES FOR 2010-2011

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The Commission's goals for the 2010/2011 Financial Year are:

1. Increased emphases on enforcing the provisions of the FCA through the Courts, in relation to business conduct deemed inimical to the competitive process to reduce the incidence of anti-competitive business practices.
2. Undertake industry studies to demonstrate the benefits of competitive markets to promote a better understanding of the role and function of the FTC in fostering a competitive economic environment.
3. Continue to advise policymakers on the implications of existing and proposed policies to ensure that those policies do not result in the hindering of competition.
4. Maintain and enhance presence in the international competition arena to provide advice on regional competition issues; and to further facilitate the growth and development of the capacity of the FTC.
5. Streamline and improve internal processes to enhance the delivery of services to all external Stakeholders as well as to the Staff and Commissioners of the organization.

## BUDGETARY ALLOCATION

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- Budgetary request and actual expenditure

The following table summarizes the actual amounts expended by the FTC in each of the three (3) previous Financial Years. Also included is the Budgetary Request for the 2010-2011 Financial Year.

<b>Object</b>	<b>2010-2011 Request (\$)</b>	<b>2009-2010 Actual (\$)</b>	<b>2008-2009 Actual (\$)</b>	<b>2007-2008 Actual (\$)</b>
<b>Compensation of Employees</b>	51,169,120	46,711,950	49,124,006	45,326,100
<b>Travel Expense &amp; Subsistence</b>	5,157,000	5,699,665	5,293,878	4,425,170
<b>Rental Of Bldg., Machinery &amp; Equip.</b>	8,079,280	7,822,701	4,630,470	4,551,824
<b>Public Utility Services</b>	1,746,000	1,927,600	1,848,598	1,580,604
<b>Purchase of other Goods &amp; Services</b>	2,987,300	3,519,138	2,805,038	1,895,133
<b>Asset Purchases</b>	0	2,444,937	278,610	0
<b>Total</b>	<b>69,138,700</b>	<b>68,125,991</b>	<b>63,980,600</b>	<b>57,778,831</b>

- Commissioners compensation

Position of Director	Fees (\$)	Motor Vehicle Upkeep/Travelling or Value of Assignment of Motor Vehicle (\$)	Honoraria (\$)	All Other Compensation including Non-Cash Benefits as applicable (\$)	Total (\$)
Derrick McKoy	\$50,000 per month	0	0	0	600,000
Peter-John Gordon	\$27,500 per month	0	0	0	330,000
Jasper Burnett	\$27,500 per month	0	0	0	330,000
Dorothy Carter-Bradford	\$27,500 per month	0	0	0	330,000

*Notes*

1. Where a non-cash benefit is received (e.g. government housing), the value of that benefit shall be quantified and stated in the appropriate column above.

- Senior Executive Compensation

Position of Senior Executive	Year	Salary (\$)	Gratuity or Performance Incentive (\$)	Travelling Allowance or Value of Assignment of Motor Vehicle (\$)	Pension or Other Retirement Benefits (\$)	Other Allowances (\$)	Non-Cash Benefits (\$)	Total (\$)
Executive Director	2009/2010	5,234,262	0	796,500	261,713	0	0	6,292,475
General Manager	2009/2010	4,096,755	0	730,125	199,271	0	0	5,026,151
Senior Legal Counsel	2009/2010	4,619,461	0	796,500	0	0	0	5,415,961
Competition Bureau Chief	2009/2010	4,894,132	0	796,500	0	0	0	5,690,632

*Notes*

1. Where contractual obligations and allowances are stated in a foreign currency, the sum in that stated currency must be clearly provided and not the Jamaican equivalent.
2. Other Allowances (including laundry, entertainment, housing, utility, etc.)
3. Where a non-cash benefit is received (e.g. government housing), the value of that benefit shall be quantified and stated in the appropriate column above.

**FAIR TRADING COMMISSION**

**FINANCIAL STATEMENTS**

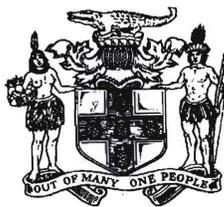
**MARCH 31, 2010**

# FAIR TRADING COMMISSION

## TABLE OF CONTENTS

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	<b>Page</b>
<b>Audit Report</b>	
<b>Financial Statements</b>	
Statement of Financial Position	<b>1</b>
Statement of Financial Performance	<b>2</b>
Statement of Changes in Equity	<b>3</b>
Statement of Cash Flows	<b>4</b>
Notes to the Financial Statements	<b>5-12</b>



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## **INDEPENDENT AUDITOR'S REPORT**

**To the Board of Directors of the  
Fair Trading Commission**

### **Report on the Financial Statements**

I have audited the accompanying Financial Statements of the Fair Trading Commission, set out on pages 1 to 12, which comprise the Statement of Financial Position as at March 31, 2010, Statement of Financial Performance, Statement of Changes in Equity and Statement of Cash Flows for the year then ended, and a summary of significant accounting policies and other explanatory notes.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these Financial Statements in accordance with International Public Sector Accounting Standards. This responsibility includes: designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### **Auditor's Responsibility**

My responsibility is to express an opinion on these Financial Statements based on my audit. I conducted my audit in accordance with the auditing standards issued by the International Organization of Supreme Audit Institutions (INTOSAI). Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the Financial Statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the Financial Statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the Financial Statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of the accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

## Opinion

In my opinion the Financial Statements give a true and fair view of the financial position of the Fair Trading Commission as at March 31, 2010, and of its financial performance, and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards.

## Report on Additional Requirements of the Fair Competition Act

I have obtained all the information and explanations which, to the best of our knowledge and belief, were necessary for the purpose of the audit. In my opinion, proper accounting records have been maintained and the Financial Statements are in agreement therewith and give the information required in the manner so required.



**Auditor General**

2015/02/10

Date

# Fair Trading Commission

Statement of Financial Position

as at March 31, 2010

	Note	2010 \$	2009 \$
<b>Non-current assets</b>			
Property, plant and equipment	6	5,723,276	6,399,029
<b>Current assets</b>			
Receivables	7	897,538	475,672
Investment		5,659,378	6,649,210
Prepayments		47,650	69,442
Bank balances	8	3,269,092	4,545,159
		<u>9,873,658</u>	<u>11,739,483</u>
<b>Current Liabilities</b>			
Accounts Payables		-	121,833
Accruals	9	23,332,027	2,968,187
		<u>23,332,027</u>	<u>3,090,020</u>
		<u>(13,458,369)</u>	<u>8,649,463</u>
Net Assets		<u>(7,735,093)</u>	<u>15,048,493</u>
<b>Equity</b>			
GOJ Capital Fund		2,735,829	5,860,119
Accumulated surplus		(10,470,922)	9,188,373
		<u>(7,735,093)</u>	<u>15,048,493</u>

Approved for issue on behalf of the Commission on..... *January 29, 2015* .....

and signed on its behalf by:

..... 

Chairman

..... 

Commissioner

**Fair Trading Commission**  
**Statement of Financial Performance**  
**for the year ended March 31, 2010**

	Notes	2010 \$	2009 \$
<b>Revenue</b>			
Income-Jampro		-	733,882
Income-IDB		2,647,205	2,388,195
Income-IDRC		1,251	74,580
GOJ Subvention		64,198,611	85,914,602
Appropriations-In-Aid Fund		126,333	463,720
<b>Total Operating Revenue</b>		<u>66,973,400</u>	<u>89,574,980</u>
<b>Operating Expenses</b>			
Compensation of Employees	10	65,107,807	46,272,088
Travelling & Transportation	11	6,196,981	5,767,014
Premises Related Expenses	12	7,868,300	6,022,068
Public Utilities	13	2,044,055	1,791,193
Goods and Services	14	5,697,688	4,521,302
Depreciation		2,646,331	2,446,451
Grant Expenditure	15	879,759	5,808,734
Bank Charges	16	84,067	107,938
Appropriation in Aid Expense		-	30,000
<b>Total Operating Expenses</b>		<u>90,524,987</u>	<u>72,766,788</u>
<b>Net (Loss)/Profit from Operations</b>		(23,551,587)	16,808,192
Other Income		301,936	62,878
Interest Income -CD & Bank		944,026	489,016
Profit on disposal		-	31,000
Transfer from GOJ/USAID Grant		2,646,331	2,446,451
		<u>3,892,292</u>	<u>3,029,345</u>
(Deficit)/Surplus for the year		<u>(19,659,295)</u>	<u>19,837,537</u>

## Fair Trading Commission

Statement of Changes in Equity  
for the year ended March 31, 2010

	<b>GOJ Capital Fund</b>	<b>General Reserve</b>	<b>Total</b>
	\$	\$	\$
<b>Balance as at March 31, 2008</b>	4,693,199	(10,649,164)	(5,955,965)
Movement in the year	3,614,778	19,837,537	23,452,315
Transfer to Income	(2,446,451)	-	(2,446,451)
Gain on Disposal	(1,407)	-	(1,407)
<b>Balance as at March 31, 2009</b>	<u>5,860,120</u>	<u>9,188,373</u>	<u>15,048,493</u>
<b>Balance as at April 1, 2009</b>	5,860,120	9,188,373	15,048,493
Movement in the year	60,950	(19,659,295)	(19,598,346)
Transfer to Income	(2,646,331)	-	(2,646,331)
Adjustment	(538,910)	-	(538,910)
<b>Balance as at March 31, 2010</b>	<u>2,735,829</u>	<u>(10,470,922)</u>	<u>(7,735,093)</u>

4 8

# Fair Trading Commission

## Statement of Cash Flows

for the year ended March 31, 2010

	2010 \$	2009 \$
<b>Cash flows from operating activities</b>		
(Deficit)/Surplus for the year	(19,659,295)	19,837,537
<b>Adjustments:</b>		
Depreciation	2,646,331	2,446,451
Increase in Current Assets	(400,073)	(206,991)
Increase in Current Liabilities	20,242,007	(8,145,408)
Transfer from Capital Fund	(2,646,331)	(2,446,451)
Net cash provided by operating activities	182,639	11,485,137
<b>Cash flows from investing activities</b>		
Investments	989,832	(6,649,210)
Capital expenditure	(2,448,538)	(3,614,778)
Net cash used in investing activities	(1,458,706)	(10,263,988)
<b>Cash flows from financing activities</b>		
GOJ-Capital Fund	-	3,075,868
Net cash flows from financing activities	-	3,075,868
<b>Increase/(decrease) in cash and cash equivalents</b>	(1,276,066)	4,297,018
Cash and cash equivalents at beginning of year	4,545,158	248,141
<b>Cash and cash equivalents at end of year</b>	<b>3,269,092</b>	<b>4,545,159</b>

## **Fair Trading Commission**

Notes to the Financial Statement

For the year ended March 31, 2010

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### **1 . IDENTIFICATION**

The Fair Trading Commission (FTC) was established to enforce the regulations of the Fair Competition Act enacted 9<sup>th</sup> March 1993 and became effective 9<sup>th</sup> September, 1993. The main activity of the Fair Trading Commission is the maintenance and encouragement of competition in the conduct of trade, business and services with a view of providing consumers with competitive prices and choices.

### **2. REPORTING CURRENCY**

These financial statements are expressed in Jamaica Dollars.

### **3. SIGNIFICANT ACCOUNTING POLICIES**

The principal accounting policies applied in the preparation of these financial statements are set out below. The policies have been consistently applied for the year presented.

#### **(a) Statement of Compliance**

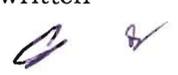
These financial statements have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) which is based on International Public Sector Accounting Standards (IPSAS) and International Financial Reporting Standards (IFRS) issued by the International Public Sector Accounting Board (IPSASB) and International Accounting Standards Board (IASB) respectively, interpretations issued by International Financial Reporting Standards Interpretation Committee of the IASB and recommendations by the Institute of Chartered Accountants of Jamaica. These Statements have been prepared under the historical cost convention.

#### **(b) Depreciation of Property, Plant & Equipment**

Property, Plant and Equipment are stated at historical cost less accumulated depreciation. Depreciation is calculated on the straight-line basis at annual rates estimated to write off the carrying value of the assets over the period of their estimated useful lives. Annual rates are as follows:

Motor Vehicle	25%
Furniture & Fixtures	10%
Computer Equipment	25%

Property, Plant and Equipment are reviewed periodically for impairment. Where the carrying amount of an asset is greater than estimated recoverable amount, it is written down immediately to its recoverable amount.



**Fair Trading Commission**  
Notes to the Financial Statement  
For the year ended March 31, 2010

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**3. SIGNIFICANT ACCOUNTING POLICIES (Cont'd)**

(c) **Cash and Cash Equivalents**

Cash and Cash Equivalents are carried in the balance sheet at cost. For the purpose of the cash flow statement, cash and cash equivalents comprise cash at bank and in hand.

(d) **Capital Fund**

This fund represents capital grants received and is written off on a straight line basis over the life of the asset.

(e) **Employee Benefits**

A provision is made for the estimated liability for untaken annual vacation leave due as a result of services rendered by employees up to the balance sheet date.

(f) **Revenue Recognition**

Revenue represents subvention received from the Government of Jamaica and grants received from various multi-national funding agencies.

Interest income is recognized in the income statement for all interest bearing instruments on an accrual basis unless collectability is doubtful.

(g) **Taxation**

No provision has been made for taxation as the Commission is tax exempt under Section 12(h) of the Income Tax Act of Jamaica.

(h) **Grants**

The Commission received funding from various agencies for specific projects. The Inter-American Development Bank (IDB) & the FTC entered into an arrangement in March 2005 which provided for US\$439,300 (US\$304,000 from IDB and US\$135,300 from Government of Jamaica) over a period of 3 years for the purpose of strengthening the Technical Capacity of the FTC. Jamaica Promotion Corporation (JAMPRO) provided JM\$7,273,825.33 in May 2007 through the Private Sector Development Programme for the purpose of Capacity Building.

**4. PENSION SCHEME**

The Commission operates a contributory pension scheme for its employees, with benefits based on the employees' earnings during recognized service. The Fund balance as at March 31, 2011 was \$56,467,962.

**Fair Trading Commission**

Notes to the Financial Statement

For the year ended March 31, 2010

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**5. FINANCIAL AND CAPITAL RISK MANAGEMENT**

## (a) Financial risk factor-

The Commission's activities expose it to a variety of financial risks: market risks (including currency risk and price risk); credit risk, liquidity risk, interest rate risk and operational risk. The Commission's overall risk management policies are established to identify and analyze the risk of exposure and to set appropriate risk limits and controls to monitor risk and adherence to limits. The risk management framework is based on guidelines set by the Board of Directors together with management and seeks to minimize potential adverse effects on the Commission's financial performance.

## (i) Price Risk

Price risk is the risk that the value of the financial instrument will fluctuate as a result of changes in market prices. The Commission mitigates against this risk assigning markup of 10% for inflation in the budget. However, when there is a reduction in the budget the Commission institutes measures to deal with the shortfall.

## (ii) Currency Risk

Currency risk is the risk that the value of a financial instrument will fluctuate because of changes in foreign exchange rates. The Commission manages its foreign exchange risk by holding foreign currency bank accounts in reputable financial institutions.

## (iii) Interest Rate Risk

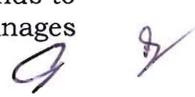
Interest rate risk is that the value of a financial instrument will fluctuate due to changes in market interest rates. The Commission has no significant interest bearing assets or liabilities, income and operating cash flows are substantially independent of changes in market interest rates. The Commission's interest rate risk arises from deposits.

## (iv) Credit Risk

Credit risk is the risk that one party to a financial instrument will fail to discharge an obligation and cause the other party to incur a financial loss. The Commission has limited concentrations of credit risk. This risk is managed through adherence to staff loans and advances policy as well as maintaining good relationship with suppliers.

## (v) Liquidity Risk

Liquidity risk is the risk that an organization will encounter difficulty in raising funds to meet its commitments associated with financial instruments. The Commission manages this risk by keeping committed credit lines available.



**Fair Trading Commission**

Notes to the Financial Statement

For the year ended March 31, 2010

**5. FINANCIAL AND CAPITAL RISK MANAGEMENT (Cont'd)**

## (vi) Capital Risk

Capital risk is the risk that the Commission fails to comply with mandated regulatory requirements resulting in breach of those requirements. The Commission's objectives when managing capital are to comply with capital requirements, safeguard the Commission's ability to continue as a going concern and maintain a strong capital base to support the development of its business.

## (vii) Operational Risk

Operational risk is the risk of direct or indirect loss arising from a variety of causes associated with the Commission's processes, personnel, technology and other external factors, other than financial risks. The Authority manages operational risk to avoid financial loss and damage to its reputation by adhering to good corporate governance practices.

**6. Fixed Assets Comprise**

	USAID furniture, Fixtures & Equipment	GOJ Motor Vehicles	GOJ Office Furniture	GOJ Fixtures & Fittings	GOJ Computers	Total
	\$	\$	\$	\$	\$	\$
At Cost or Valuation April 1, 2009	876,678	1,640,861	1,012,971	1,080,116	10,854,349	15,464,976
Additions	-	-	120,500	2,104,177	284,811	2,509,488
Closing Balance	<b>876,678</b>	<b>1,640,861</b>	<b>1,133,471</b>	<b>3,184,293</b>	<b>11,139,160</b>	<b>17,974,464</b>
Depreciation April 1, 2009	876,678	1,449,427	760,117	1,069,192	4,910,533	9,065,947
Charge for year	-	191,434	48,132	196,848	2,209,917	2,646,331
Adjustment					538,910	538,910
Closing Balance	<b>876,678</b>	<b>1,640,861</b>	<b>808,249</b>	<b>1,266,040</b>	<b>7,659,360</b>	<b>12,251,188</b>
<b>Net Book Value</b>						
March 31, 2010	-	-	<b>325,222</b>	<b>1,918,253</b>	<b>3,479,800</b>	<b>5,723,276</b>
March 31, 2009	-	<b>191,434</b>	<b>252,854</b>	<b>10,926</b>	<b>5,943,816</b>	<b>6,399,029</b>

**Fair Trading Commission**  
Notes to the Financial Statement  
For the year ended March 31, 2010

	<b>2010</b>	<b>2009</b>
<b>7. Receivables</b>	<b>\$</b>	<b>\$</b>
Innovative Corporate Solution	23,898	23,898
GCT Refund	326,936	213,957
Overpayment	80,670	87,350
Salary Advance/Salary overpayment	36,198	85,530
Interest receivables	13 886	33,932
Airfare	113,014	-
Other receivables	2,000	31,000
Withholding Tax	300,936	-
	<b><u>897,538</u></b>	<b><u>475,672</u></b>
<b>8. Cash and Cash Equivalents</b>	<b>\$</b>	<b>\$</b>
RBTT Bank-IDRC US\$ A/C	39,983	40,331
RBTT Bank-IDB US\$ A/C	685,173	1,040,453
RBTT Bank-Current A/C	2,537,936	3,458,375
Petty Cash	6,000	6,000
	<b><u>3,269,092</u></b>	<b><u>4,545,159</u></b>
<b>9. Accruals</b>	<b>\$</b>	<b>\$</b>
Statutory Deductions	1,493,109	367,831
Statutory Deductions 07/08	105,962	-
Statutory, Interest & Penalty	13, 894,298	-
Electricity	206,408	70,084
Rental of Office Space	714,862	-
Vacation Leave Pay	2,890,107	-
Outstanding Salary 09/10	3,582,812	2,530,272
Other Payables	444,469	-
	<b><u>23,332,027</u></b>	<b><u>2,968,187</u></b>

**Fair Trading Commission**  
Notes to the Financial Statement  
For the year ended March 31, 2010

<b>10. Compensation of Employees</b>	<b>2010</b>	<b>2009</b>
	<b>\$</b>	<b>\$</b>
Salaries	47,302,387	39,183,183
Salaries (Temp) & Wages	1,766,931	1,116,729
O/S Stat. ded., Int. & penalty	9,329,684	-
Accrued Vacation Leave	2,890,107	2,530,272
Clothing & Robing Allowance	44,460	35,910
Meal Allowances	424,228	468,010
Overtime Allowances	384,089	353,705
Staff Welfare	130,307	234,865
Health Plan	1,639,948	1,402,101
Pension Plan Contribution	1,195,666	947,313
	<b><u>65,107,807</u></b>	<b><u>46,272,088</u></b>
<b>11. Travelling and Transportation</b>	<b>2010</b>	<b>2009</b>
	<b>\$</b>	<b>\$</b>
Motor Vehicle Allowances	5,695,266	5,274,458
Cab Fare	4,400	6,600
Petrol & Oil	253,600	216,216
Repair & Maintenance-Motor Vehicles	176,248	237,114
Air Fare	3,466	-
Subsistence (Foreign)	64,001	32,626
	<b><u>6,196,981</u></b>	<b><u>5,767,014</u></b>
<b>12. Premises Related Expenditure</b>	<b>2010</b>	<b>2009</b>
	<b>\$</b>	<b>\$</b>
Rental of Building	7,786,050	5,679,528
Other Rental	82,250	342,540
	<b><u>7,868,300</u></b>	<b><u>6,022,068</u></b>

**Fair Trading Commission**  
Notes to the Financial Statement  
For the year ended March 31, 2010

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<b>13. Utilities</b>	<b>2010</b>	<b>2009</b>
	\$	\$
Electricity	1,055,786	846,228
Telephone & Fax	988,269	944,965
	<u><b>2,044,055</b></u>	<u><b>1,791,193</b></u>

<b>14. Goods and Services</b>	<b>2010</b>	<b>2009</b>
	\$	\$
<i>Professional Services:</i>		
Auditing Fees	-	6,000
Advertising & Public Relation	1,608,175	512,362
Consultancy	776,371	478,220
Consulting (Legal Fees)	34,500	97,500
Stipend (Commissioners)	1,572,158	1,583,750
 <i>Office and General Expenses:</i>		
Drugs & First Aid	8,403	10,648
Text & Reference Books	8,110	57,606
Food & Drink	182,149	268,592
Printing and Stationery	541,740	479,574
Postal & Cable	74,447	75,817
Subscriptions	81,389	65,245
Repairs & Maintenance	503,470	277,525
Computer Software Expenses	-	226,047
Official Entertainment	3,679	10,252
Insurance	126,110	127,933
Sundry expenses	2,444	37,427
 <i>Miscellaneous Expenses:</i>		
Sanitation, Security Serv. Donation etc.	174,543	206,804
	<u><b>5,697,688</b></u>	<u><b>4,521,302</b></u>

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**Fair Trading Commission**  
Notes to the Financial Statement  
For the year ended March 31, 2010

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<b>15. Project Expenditure</b>	<b>2010</b>	<b>2009</b>
	<b>\$</b>	<b>\$</b>
IDB Project GOV. Contribution	4,896	1,360,813
IDB Component (1)	191,491	2,400,845
IDB Component (2)	467,372	1,014,538
IDB Component (3)	216,000	635,000
IDRC Component (1)	-	19,898
JAMPRO Component (2)	-	70,000
JAMPRO Component (3)	-	307,640
	<b><u>879,759</u></b>	<b><u>5,808,734</u></b>
<b>16. Bank Charges</b>	<b>2010</b>	<b>2009</b>
	<b>\$</b>	<b>\$</b>
RBTT IDB US\$ Account	17,152	23,504
RBTT US\$ Account	212	249
RBTT Account	66,703	84,185
	<b><u>84,067</u></b>	<b><u>107,938</u></b>