



Competition and Consumer Protection: The Relationship in Practice in Jamaica¹

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Background

A sound argument could be advanced to have consumer protection and competition protection legislations enforced by a single authority, or by separate authorities. Jamaica’s system of enforcing these legislations may be considered an anomaly when compared to other systems around the world, in that the competition authority in Jamaica enforces legislation which addresses both competition and consumer protection matters; and at the same time, a separate consumer protection agency enforces its own legislation.

This presentation will cover four issues regarding Jamaica’s system for enforcing consumer and competition protection legislation: (i) the circumstances which led to the anomaly; (ii) the advantages and disadvantages of this system; (iii) the opportunities for the greatest “public relations” benefits; and (iv) coordinating activities between this hybrid competition authority and the consumer protection agency.

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1. The circumstances which led to the anomaly

The Fair Trading Commission (FTC) is Jamaica's competition authority and was established in 1993 to administer the Fair Competition Act (FCA), which contains provisions geared toward safeguarding competition as well as provisions geared toward enhancing consumer welfare. The FCA was enacted in 1993. The Consumer Affairs Commission (CAC) is Jamaica's consumer protection agency. It was established in 1992 and administers the Consumer Protection Act (CPA), which was enacted only five years ago.

At the time of the enactment of the competition legislation, there was a noticeable need to include consumer protection provisions as there was no other legislation which offered consumers any protection against deceptive practices by merchants. Accordingly, the competition legislation was passed with provisions geared toward protecting consumers as well as the competitive process.

The FTC was established during the era when there were significant changes in the country's economic landscape. These changes include the liberalization of most sectors, the privatization of state-owned enterprises, the lifting of import quotas and the removal of price controls. The changes in the economic landscape brought about a flood of activities, including new businesses, new products, and greater choices for consumers. There was much hustling and bustling; and quite naturally, there was also a level of consumer confusion with respect to those new products and new ways of doing business. As the saying goes, "*A consumer is a shopper who is sore about something*".

The then relatively new competition authority provided the much needed avenue for consumers to register their grievances against merchants. Consumer complaints were numerous; and as there was no other legislation in place to address their concerns, the FTC thought it necessary, and it suited us, to assume the role of a consumer advocate whilst we strived to

nurture a culture of competition. I repeat the theme of this seminar “The Consumer is King (or Queen)” – But who should ensure that he (or she) maintains his seat on the throne? Should it be us, the FTC, as the competition authority?

In the early years, our focus was primarily on consumer protection issues as a way of building the public profile of the institution; of building its technical capacity to enforce the law; as well as a way to demonstrate to the general public the benefit of having competition and consumer protection laws. By focusing on consumer issues, we were able to carry out a significant part of our mandate effectively, albeit with limited human and financial resources at our disposal.

Our approach to building a competition culture was therefore to sell the agency as a consumer advocate ‘defending’ consumers, in order to ‘win’ their support and to gain acceptance; and at the same time for the Staff to gain experience in working with the new legislation. Our tag line “*a fair deal, your right by law*” was coined during this period and appropriately reflected this thrust.

The Jamaica FTC, in the early stages, had neither the knowledge base nor the technical capacity to handle competition matters. Our public education campaign was therefore geared at educating the general public, including merchants, on consumer protection matters with very little emphasis on competition issues. This had negative effects on the competition authority before its tenth year of existence as local firms had developed a very limited understanding of the scope of Competition Law & Policy; and it became necessary for the competition authority to expend significant resources on sensitizing firms on competition law through public education activities. Most of the resources available were being allocated to deal with consumer protection issues, at the ‘expense’ of competition protection matters. By 2004, it was clear that there was a

need for us to devote more resources to competition matters while not significantly curtailing the equally important issue of protecting consumers.

In 2005, Jamaica passed its consumer protection legislation, one which covers a much wider scope of consumer related issues than the FCA does; and Jamaica's premier consumer protection agency, the Consumer Affairs Commission was charged with the responsibility of enforcing that law. Accordingly, we increased our focus on competition issues; and reduced resources expended on consumer matters, specifically those involving personal redress.

2. The Advantages of the system

There are numerous advantages of the current system.

From the perspective of consumers, it was clearly better to pass a specialized consumer protection law rather than to devote additional resources to enforce the limited consumer related provisions which are contained in the Fair Competition Act. Specifically, the consumer protection law is more "consumer-friendly" than the competition law for a number of reasons: (i) it covers a much wider scope of consumer related issues than those covered by the competition law; (ii) issues are resolved quicker compared to issues addressed through the competition law; and (iii) consumers usually receive monetary compensation - which is not provided for under the competition law. From the perspective of the competition authority, there are at least two reasons why it was deemed necessary for the FTC to retain the authority to pursue matters involving consumer protection.

Firstly, if the competition authority is to earn and maintain the trust and support of the general public, the authority must demonstrate that it is serving consumers' interests. Consumers could more readily discern the benefits from enforcing consumer protection issues such as, say,

deceptive advertisements, than they could discern the benefits of enforcing competition protection issues such as preventing merchants from engaging in predatory conduct.

Secondly, the distinction between consumer protection and competition protection is sometimes blurred and the current system allows the competition authority to pursue consumer issues which have a wider implication for the proper functioning of markets. That is, those issues which are likely to adversely affect the competitive environment. Using consumer complaints to demonstrate the benefits of competition is more appealing and makes it easier for the public to understand competition issues. The matters complained of by consumers are numerous and involve a wide variety of industries, markets, products and services. Smaller merchants that may be affected by the activities of larger merchants generally do not complain, and this could be because of ignorance. It is our experience that it is the consumers who provide much of the information on issues affecting competition in markets.

Another advantage is that this system allowed us to acquire and sharpen the tools needed to carry out competition law analyses. This was very important given changes in the economic landscape generally, and in the telecommunications sector specifically. The authority therefore recognized the need to invest in improving its technical capacity to deal with issues that had arisen and potential issues which had yet to surface. We therefore embarked on programmes to improve our technical skills and this in effect, facilitated the shift in focus.

The Disadvantages of the system

The main disadvantage that we have experienced in operating a hybrid system is an inefficient balance of focus, skewed towards consumer protection matters. Because of the nature of consumer related complaints and the immediate response to resolving such them, too much emphasis has been placed on those matters. Competition matters are often times, not given the

level of attention and dedication that is necessary. For this reason, it is important that the authority maintain close oversight of its case load and undertake continuous review of its workload and the status of specific cases which are being investigated. We recognize that competition matters involving dominant firms will have a greater impact on a larger number of consumers and therefore we have been pursuing such cases more rigorously.

3. Opportunities for greatest “public relations” benefits

I believe that the greatest opportunity of maximizing the public’s image of the authority lies in focusing on those matters that can simultaneously affect competition and directly impact on final consumers. We therefore focus on competition issues at the retail level instead of in input markets. Jamaica is predominantly a retail-oriented economy in that Jamaica imports most items that are consumed. The authority focuses on markets relating to items that represent a significant portion of consumers’ disposable income. For example motor vehicles, telecommunication services, health services and education (including sports) services. We focus also on essential items or necessities such as pharmaceuticals; we focus on products that are consumed generally by the elderly; and on those that are complex, such as insurance policies, where it is not easy for consumers to compare the range of offerings presented by merchants.

In hindsight, we recognize that undertaking studies to quantify the benefits of competition interventions would perhaps have been an equally effective means of ensuring that consumers appreciate the importance of competition; not only to the development of Jamaica but also to the improvement in our welfare.

Our main competition provisions are abuse of dominance and collusive arrangements. Matters relating to these provisions take a long time to investigate; and to establish a breach is difficult. Investigation and prosecution of matters involving consumer protection, being quicker

and easier to deal with and which generally impact consumers directly and immediately, afford us with a constant outflow of output. Results from these matters allow us to be in the public's eye consistently, for the correct reasons.

4. Coordinating Activities

As consumer protection legislations are enforced by both the competition authority and the consumer protection agency, concurrent jurisdiction may result in both agencies wanting to address the same issue or neither agency addressing an issue because each mistakenly believe that the other is pursuing the matter. There is therefore, a risk of either a duplication of effort or issues falling through the cracks. We have taken steps to reduce the likelihood of such occurrences, by establishing a line of communication between the two bodies, where the work undertaken by each body is discussed so as to take advantage of any synergies and to reduce overlaps and inefficiencies. There is therefore a need to maintain a close relationship which involves frequent discussions and collaboration between the two agencies.

There are instances where consumers complain to both agencies about the same issue. Here the issues are evaluated independently. The competition authority, through its screening process determines which agency is more appropriate to handle the matter; and the consumer protection agency is advised accordingly. Sometimes the issues raised involve the consumer seeking personal redress; and at the same time they have implications for the proper functioning of the market. In these instances the consumers benefit from having the matter reviewed by both agencies.

In essence, the competition authority focuses only on those consumer related issues that have implications for the efficient functioning of the market. Cases in which the issues appear to be a 'one off' situation or which involve personal redress to aggrieved consumers are generally

transferred to the consumer protection agency. This system has resulted in increased administrative tasks for the competition authority. While different, it has been working without serious complications; and to date, we have not had any significant issues relating to duplication or waste of resources.

Finally, I view the two agencies as one institution, with two units, each having related but distinct and separate functions; and at the same time facilitating each other. The objective of competition law is not distinct from the objective of consumer protection law; as both are concerned with the welfare of consumers.

Thank You.