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**JAMAICA'S EXPERIENCES AND BENEFITS: COMPETITION LAW ADMINISTRATION<sup>1</sup>**



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## **When we started**

Competition law and policy is certainly more recognized and more prominent today than it was in 1993, when Jamaica instituted the Fair Competition Act (FCA) and launched the Fair Trading Commission (FTC).

The doors of the FTC were first opened in February of 1994, during a significant turning point for the Jamaican economy – a time of much economic activity. The introduction of competition law constituted a major part of the economic reform package of the time.

That era is defined by our Government's dramatic reform programs, which saw the liberalization of most sectors, the privatization of state owned enterprises, the lifting of import quotas and the removal and reduction of several trade barriers. The liberalization of the telecommunications industry which came in the late 1990's was of particular significance, as it brought technological advancement that impacted on, and further added to, the propelling of economic activities. There were new ideas, new services, and new ways of doing business. There was a climate of business opportunities for entrepreneurs and of windfall for consumers. The level of consumer choice was unprecedented.

This new system necessitated a new set of guidelines for the state of play, and the Fair Trading Commission was established to be the guardian of this market-driven economy – to ensure that our markets function competitively and that the competitive process is not derailed by anti-competitive practices. The so-called "freeing up" promises enormous benefits to the economy, to businesses and to consumers but for these benefits to be realized the proper systems and structure must be in place.

## **About the FTC**

In the early days, as a new agency the FTC faced several challenges such as (a) limited human resources and expertise in the area; (b) insufficient funding; (c) an untrained judiciary in the area of competition law; (d) inconsistent or incoherent regulatory policies; and (e) a lack of a competition culture within our society.

At that time in our development, we placed high priority on creating the right infrastructure to ensure the effective execution of our function. As such we placed special focus on (a) hiring competent ‘trainable’ personnel (b) furnishing our offices; (c) and using the media to sensitize the general public on our core function.

We have grown from a Technical Staff complement of 4 persons to 12: we now have 3 Attorneys, 4 Economists, 2 Research Officers, a Complaints Officer, a General Manager and the Executive Director; and based on our growing workload over the past few years, the Staff complement should well be doubled in order to for us to maximize our level of efficiency. But because of limited resources we are unable to expand our organization.

Training of Staff and the Commissioners is particularly important, specifically because of the dynamic nature of competition law enforcement. Any training programme must be ongoing and must allow for information sharing as new Staff joins the Agency. The relative unavailability of suitably trained professionals in the area was, and still is, a major challenge as the expertise does not reside within the region. It was not until 3 years ago that upon our suggestion, the UWI Cave Hill Campus created a module on Competition within its Law degree programme. Of note is that we have been making representation to the Mona Campus to have similar programmes included in its curricula.

We therefore have had to source expertise from outside, whether for training purposes or for guidance on investigation. Accordingly, the creation of links and the maintenance of relationships with established Competition Agencies, developmental institutions such as the OECD, UNCTAD and the ICN is of utmost importance throughout an Agency’s life

These agencies provide guidance and support to younger agencies and facilitate the sharing of experience and information. Participation in discussions and workshops has helped significantly in our growth and development. There is so much that we have learnt through these means.

Our approach to building a competition culture in the early years was to sell itself as a consumer advocate ‘defending’ consumers, in order to ‘win’ their support. It was also convenient at the

time to focus on consumer issues instead of competition matters as the Commission had neither the knowledge base nor the requisite technical capacity to handle competition matters.

Our public education campaign was therefore geared at educating the general public and business enterprises on consumer protection matters with very little emphasis on true competition issues. This had debilitating effects on the Commission before its tenth year of existence as locally based firms had developed a very limited understanding of what Competition Law & Policy is about; and it became necessary for us to expend significant resources on sensitizing firms on Competition through ongoing activities.

### **Impact of our work on the Jamaican economy**

Our role at the FTC is to ensure that markets within Jamaica are competitive; that there are no impediments to competition and that firms do not engage in activities that distort competition or negatively harm the competitive process.

In addition to the enforcement of the Law, we also engage in non-enforcement activities, or advocacy, through which we inform the Government and other public agencies, of how their conduct may be impeding the competitive process.

Some of the sectors that we have impacted are:

- Airline industry,
- Veterinary industry,
- Furniture and appliances sector,
- Motor vehicle sector – New car, Used car and repairs
- Telecommunications
- Dairy industry
- Beer market
- Baking
- Aspects of the banking sector
- Education

- Agricultural sector
- The market for Remittance services

We remain involved in the development of Jamaica's Energy and Telecommunications policies; as well as of our Timeshare legislation.

Over the years we have concluded a number of Consent Agreements which affect the beer, furniture and appliances, motor vehicle, telecommunications and pharmaceutical sectors. We have made Court appearances in six matters, involving motor vehicle, entertainment and real estate industries; and the matters investigated have spanned a wide and diverse range of industries including the transportation sector, real estate, entertainment, automobile, education and the legal profession.

The types of alleged conduct have also been varied. These include misleading advertising, abuse of dominance, exclusive dealing and collusion/conspiracy.

The absence of a strong competition culture has meant that competition cases are generally viewed as being of low priority and as less serious in nature than other cases. This attitude became apparent when, in respect of a suit filed by the FTC which had come up for trial, the Judge commented that the Court's time should not be wasted with such trivial matters which would be better suited for arbitration and/or Dispute Resolution. In support of this view, the Judge awarded a nominal sum as a penalty.

For this and other reasons, including recommendations from other jurisdictions we thought it necessary and important for us to facilitate "Workshops for members of the Judiciary". The purpose of the workshops is to sensitize members of the Judiciary to some of the issues they are likely to grapple with when presiding over competition related cases. In recognition of this vital role of the judiciary, we developed an ongoing training program in which we facilitate at least one Workshop every eighteen months. Since 2003 we have hosted 5 Workshops and our participants have included members of the Jamaican, Barbadian, OECS and Trinidadian judiciaries as well as Judges of the Caribbean Court of Justice (CCJ). The direct goal being to strengthen the legal framework within which we operate.

We believe that our work in this regard has widened our Judges' understanding of the area.

In addition to investigations for enforcement purposes, we conduct market studies to gain an in-depth understanding of how sectors and markets are working, ultimately to determine whether there are impediments to competition. To date, we have conducted markets studies relating to many industries, including:

- Banking
- Distribution of basic food items
- Agriculture
- Telecommunications
- Bill Payment
- Distribution of Pharmaceuticals

## **The FCA**

It is important that the legislation is created as 'correct' as possible from the beginning as this will reduce the likelihood of successful challenges. We have experienced several challenges because of weaknesses in our legislation which have resulted in a need for extensive amendments. The process has extended over several years and there are some outstanding matters that are still to be addressed.

At the same time it is very useful to ensure that the legislation is consistent or coherent with established Government Policies. In our situation there are just one or two statutes that recognize the FTC or the FCA. Regulations and/or Government policy were enacted without knowledge of Competition considerations, and generally, business is conducted on behalf of the Government without due regard for the requirements of the FCA. Intensive Competition advocacy is therefore necessary to educate the policy makers with a view of having them recognize the importance of Competition in their considerations.

### ***Factors Contributing to Success***

Some of the factors that have contributed to the FTC's success within the past five years are:

1. We have been able to attract and develop a high level of expertise over time; and have been able to retain most of our more experienced attorneys and economists.
2. We have received much needed external funding which has been used mainly for the training of our Staff.
3. Our ability to continue facilitating Workshops for the Judiciary.
4. Better prioritization of our workload, by using case selection criteria and an investigation workflow process, which ensured transparency, consistency and objectivity.
5. We have established and maintained relationships with other government agencies, universities, international agencies, the business community and the media.
6. Utilizing measures to address the challenge of limited financial resources through close monitoring of operating costs, streamlining enforcement processes, and employing an ongoing review of our priorities, and re-organizing our operations in line with those priorities.

We wish for the Guyana Competition Commission the very best, and we remain available to provide assistance in whatever way possible.

Thank you.