

**MINISTRY PAPER NO.:** \_\_\_\_\_

## **PERFORMANCE OF THE FAIR TRADING COMMISSION FOR FINANCIAL YEAR 2007/2008 AND FOCUS FOR FINANCIAL YEAR 2008/2009**

### **1.0 Purpose of Ministry Paper**

The Purpose of this Ministry Paper is to inform Parliament and the public about the performance of the Fair Trading Commission (FTC) for the 2007/2008 Financial Year and its main focus for the 2008/2009 Financial Year.

### **2.0 Role and Function**

The FTC was established in 1993 to administer the Fair Competition Act (FCA). The FCA 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 providing consumers with competitive prices and product choices.

Competition leads to optimal allocation of scarce resources while ensuring that the highest quality goods and services are offered for sale at competitive prices. It also ensures that the greatest incentives exist for product innovation and development. The work of the FTC is critical to the achievement of these objectives. The functions of the Commission 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 Act;
- carry out investigations that may be requested by the Minister or that it may consider necessary or desirable in connection with competition matters;
- to advise the Minister on such matters relating to the operation of the Act, 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 a criminal offense to fail 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.

### **3.0 Priority Programmes and Targets**

For the Financial Year 2007/2008, the Commission set the following programmes as its main priorities:

- Increased focus on competition complaints and investigating misleading advertising as an offence against competition; sensitizing the judiciary accordingly.
- Initiate legal action for those complaints for which out of court settlements are not forthcoming and conclude legal matters already before the Courts.
- Prepare and disseminate advisories, opinions and guidelines. Develop and execute media campaigns and organize seminars, workshops and meetings.
- Meet with business entities, trade groups and educational institutions. Educate the private sector (manufacturers and distributors) on the requirements of the FCA and the need to provide adequate information about products and services offered for sale, with a view to reducing breaches of the Act.
- Continue to collaborate with the Telecommunications Regulator, the Office of Utilities Regulation, to promote competition in the Telecommunications industry.
- Undertake industry studies where appropriate.
- Participate in, and organize appropriate forums for policy makers within the public sector, to strengthen their appreciation of competition issues in their decision and law making processes. Hold meetings with various associations, educational institutions, Government agencies and technical advisors within the public sector
- Spearhead competition advocacy through coordination of activities with the Consumer Affairs Commission, the Bureau of Standards of Jamaica, the Ministry of Education, the Jamaica Intellectual Property Office and other arms of Government
- Facilitate the training of the judiciary
- Assist the Ministry of Foreign Affairs & Foreign Trade as it seeks to address competition issues in domestic, regional and global trade.
- Participate in the CARICOM efforts to implement chapter VIII of the revised Treaty of Chaguaramas, relating to the Rules of Competition; and to establish the Regional Competition Authority.

#### **4.0 Highlights of Performance/Achievements**

##### **4.1 Cases Received and Investigated**

Over the period April 1, 2007 to March 31, 2008, a total of nine hundred and thirty-seven (937) cases were investigated by the Commission with three hundred and fifty-seven (357) being completed and closed. This compares with eight hundred and thirty-seven (837) cases investigated and two hundred and fifty-three (253) being completed in the equivalent period in the previous Financial Year.

A total of one hundred and sixteen (116) new cases were received during the Financial Year. Of that number, eighty-four (84) cases were classified as cases of

'Misleading Advertising' (MA). Similar to the previous years MA cases accounted for the majority of complaints received, comprising approximately seventy-two percent (72%) of the new cases received. Of the nine hundred and thirty-seven (937) cases investigated during the period, seven hundred and fifty-five (755) or 81% were classified as MA. The majority of MA cases were against used car dealers and providers of telecommunications services who use marketing promotions that fail to provide consumers with all material information.

Cases deemed 'Not covered by the FCA' (NA) and 'Offences Against Competition' (OAC) formed the second highest category of complaints received, each accounting for approximately twelve percent (12%), compared with eighteen percent (18%) and eight percent (8%) respectively, in the previous period. This indicates that there has been an increase in the number of Competition related complaints received by the Commission and we feel that this is attributable to the efforts being made, to educate the general public about Competition offences.

#### **4.1.2 Out-of-Court Settlements & Other Agreements**

##### **FTC v. Jamil International**

Having completed its investigations into the allegations by the informant the Staff concluded there was a supportable charge of Misleading Advertising. A suit, for breach of Section 37 of the FCA, was filed in the Supreme Court on May 3, 2006. Jamil subsequently approached the Staff, expressing a willingness to enter into a Consent Agreement. A Consent Agreement was signed and the Respondent paid the FTC an amount of \$117,141.25 representing the Commission's costs.

#### **4.1.3 Court Matters**

##### **Bent/Speare Entertainment Limited**

In December 2006 the Commission received two complaints, both alleging that in that same month the Respondent 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 an investigation the Staff concluded that the Respondent's conduct constituted a breach of Section 37 of the FCA, informed the Respondent of the breach, and directed that if it intended to continue its sale of Advanced VIP tickets, such tickets would have to be sold at the price advertised. The Respondent complied with the directive.

On February 7, 2007, the Commission filed suit for breach of Section 37 of the FCA in the Supreme Court. The Respondent approached the Staff with a view to entering

into a Consent Agreement and on December 12, 2007 the matter was adjourned to allow the parties to finalize the Consent Agreement.

### **Errol Bailey trading as Foundation Music Showcase**

In January 2007, the Commission received thirty-five (35) complaints against Errol Bailey and, acting on the complaints, the Staff launched a preliminary examination into the matter. The allegations are that during the month of December 2006, Mr. Bailey advertised through various print and electronic media that several artistes would perform at its scheduled concert called 'Foundation Music Showcase'. The performers named included several locally based artistes as well as the internationally acclaimed artiste, Peabo Bryson. The concert was to be held at the Constant Spring Golf Club in St. Andrew on January 6, 2007.

Arising from said preliminary investigation Mr. Bailey was informed that his failure to deliver the artistes at the scheduled event as advertised was likely to be a breach of the FCA, that the matter would be pursued in the Court for its determination of whether that conduct amounted to a breach of the FCA. Pleadings are now closed in this matter. The case was heard by the Court on March 12, 2008. Judgement was reserved.

Of note is that these cases arose after we had made a concerted effort to educate event promoters and major event sponsors and other persons and organizations with related interests in order to combat recurring problems of the nature described in the two matters mentioned above. Our efforts included the hosting of a seminar, articles in the major newspapers and a press release which stated that thereafter the FTC would be prosecuting any person who it finds to be in breach of Section 37 (Misleading Advertising) of the FCA.

## **4.2 Macro Investigations Carried Forward from 2005/06**

### **Computers – Computer Malfunction**

Arising out of numerous complaints on the quality and durability of computers which are assembled in Jamaica, the FTC continued investigations to determine whether assemblers/resellers are using sub-standard parts. It was found that the damage to the computers was consistently being attributed to one or a combination of the following factors:

- power surge
- unstable power supply
- dust
- user error/misuse
- infestation by ants
- viruses and worms
- exposure to high temperatures.

The Department of Customs has supplied the FTC with data related to the importation of computers and computer parts for the years 2004 and 2005. Additionally, the Companies Office of Jamaica provided a list of all entities registered primarily as computer vendors. In January 2007, letters were sent to a select number of these entities requesting information on computers sold and repaired, for the period 2004 to 2006. It was intended that this information would be used in completing analysis of the issues raised in the complaints, following which the FTC would disseminate guidelines for the purchase of computers.

### **Education - Regulation of Overseas Tertiary Institutions in Jamaica**

This investigation continues and the FTC intends to formulate and submit recommendations to the various agencies involved in the regulation of such institutions. These recommendations will be based on the solutions which other countries have employed in an effort to ensure that entities operate on a level which is on par with both national and international standards.

### **Food - Accuracy of labels**

The FTC continued further investigations into this matter with the objective of preventing dissemination of unsubstantiated or otherwise deceptive claims about food. The investigation involves a coordinated effort with the Bureau of Standards Jamaica (BSJ), the Scientific Research Council (SRC) and the Ministry of Health (MOH).

The Commission was concerned with the dangers which misleading representations on food labels pose for consumers generally and specifically for persons who rely on such claims to inform their daily nutritional intake. The following issues were targeted:

1. Absolute nutrient and health claims which might be false or misleading (e.g. "fat-free");
2. Nutrient content claims for foods that contain high levels of nutrients which have health implications (e.g. cholesterol, trans-fat, saturated fat etc.)
3. Comparative nutrient content claims which do not make the basis for the comparison clear (e.g. "1/3 less sugar than...", "healthier than..." etc.).
4. Claims that a particular ingredient has various health benefits, such as "calcium promotes healthy bones and teeth" when the food does not contain sufficient amounts of the nutrient in order to bring about the stated results or benefits.

The ultimate aim of this study is to facilitate the implementation of standards and regulations with regard to nutrition labeling and dietary health claims where there are none. With the implementation of such regulations and with the cooperation of the respective agencies, a standardized test can be formulated to provide a transparent, science-based system for verifying the accuracy of nutrient values and health claims

on labels. The end result would be that consumers and health professionals alike can be confident that the nutrient information on labels is reliable and that it reflects the nutrient content of the product. The study should be wound up by mid 2008.

### **Travel - Airline Special Fares**

Under Section 40 of the Fair Competition Act (FCA), failure to supply a reasonable amount of a good represented for sale at a bargain price, amounts to a breach of the Act. The investigation is to determine whether airlines actually provide a reasonable number of seats when they offer special rates, and it is continuing.

### **Travel - Information on Visa Requirements**

Previous research revealed that travel agents and airlines have no obligation to inform their customers about visa requirements of the countries to which they intend to travel.

In addition to letters sent to all travel agencies and airlines which operate or conduct business in Jamaica encouraging them to advise their customers of the need to verify visa requirements before travel, the FTC also made recommendations to the Ministry of Foreign Affairs and Foreign Trade (MFAFT) on the matter.

The airlines were also encouraged to include a statement and/or notice or other informational documents on their websites advising of possible visa requirements. The FTC met with the Jamaica Association of Travel Agents (JATA) and it provided its own recommendations and suggestions of ways in which information can be made more accessible to the public. Those recommendations and suggestions will be submitted to the MFAFT for input.

### **Travel - Lost/Damaged Luggage Policy**

The Commission is continuing an assessment of the policies of airlines operating in Jamaica with respect to compensation for lost or damaged luggage.

## **4.4 Public Education Programmes and Media Campaigns**

The FTC continued to inform and educate the public on issues related to competition law and policy. During the 2007/2008 Financial Year the Commission met with various associations, companies and groups including the Private Sector Organization of Jamaica, the Rotary Club, the Dental Auxiliary School, the Stony Hill HEART Academy, the Norman Manley Law School, private hospital administrators, the Montego Bay Chamber of Commerce, Red Stripe Limited, the Broadcasting Commission and the Bureau of Standards.

Presentations were also made to students of tertiary institutions such as the Associate Degree students of the Management Institute for National Development (MIND).

The eighth (8<sup>th</sup>) annual lecture in the Shirley Playfair Lecture Series was hosted on Thursday, September 20, 2007, at the Knutsford Court Hotel. On this occasion we were honoured by the presence of Dr. Michal Gal, Senior Lecturer, Director of the Law and MBA Program, and Co-Director of the Forum on Law and Markets at the Faculty of Law, University of Haifa, Israel.

Following an Address and Remarks from the Hon. Karl Samuda, Minister of Industry Investment & Commerce, Dr. Gal presented a paper entitled “Enhancing Competition Law Enforcement Through Regional Trade Agreements”. She mapped the trend towards the creation of Regional Trade Agreements (RTA), highlighting the experiences of parties to agreements such as the European Free Trade Area (EFTA), North American Free Trade Area of the Americas (NAFTA), the Asia-Pacific Economic Cooperation (APEC), the Southern Common Market (MERCOSUR), and the Common Market for Eastern and Southern African (COMESA). Through her exploration of these various models Dr. Gal was able to draw attention to matters such as the level of commitment required from countries in enforcing their national Competition Laws and in coordinating joint investigative and other activities; and the trends of technical assistance that might be required to ensure that all relevant parties are able to create and maintain national Competition Agencies. The inescapable message was that regional integration brings with it the need for member states to adopt and implement an effective regional Competition framework which would create a level playing field for all, in order that the gains from trade and investment integration may be realized.

This led directly into an examination of some of the competition enforcement issues that could arise in the context of the CARICOM Single Market & Economy (CSME). The jurisdiction and structure of the Caribbean Competition Commission which was launched in January 2008 received particular attention.

A spirited discussion followed the presentation, in which several persons had their issues deftly addressed by the presenter. Again, our audience included interest groups and stakeholder groupings such as the business community, the Jamaican Bar, the Judiciary, Government Ministries and Agencies, and academia, and on this occasion entities that have not been represented over the years were duly represented. We refer to bodies such as the Central Bank, the Jamaica Stock Exchange, the Registrar General’s Department and the Jamaica Manufacturers Association.

The Jamaica Information Service assisted with the promotion of the event and that included appearances by Dr. Gal, the Senior Legal Counsel and the Competition Bureau Chief in the Gleaner’s Chat Room as well as the Executive Director, in a number of radio and television interviews.

The Commission hosted its fourth Workshop for members of the Judiciary, on March 14<sup>th</sup> and 15<sup>th</sup>, 2008. The theme was Competition Issues in the Telecommunications Sector. Nineteen (19) persons attended – eleven (11) Jamaican Judges, including the Honourable Chief Justice Zaila McCalla, two (2) Barbadian Judges, one from Trinidad & Tobago, three (3) from the Caribbean Court of Justice, and two (2) members of the local Telecommunications Appeals Tribunal. Six (6) of the eleven members of the local judiciary had also participated in previous Workshops. The Workshop was considered by all participants to be very informative and beneficial; and all persons said that they would be interested in attending other similar Workshops. The event was hosted jointly with the Office of Utilities Regulation (OUR) and funding was provided by the OUR together with the IADB, under an ongoing FTC Project.

The Executive Director and the Competition Bureau Chief were interviewed on the Nationwide radio programme “At Your Service”. Callers into the programme were able to have their questions answered on spot. They were also interviewed by the JIS on March 3, 2008, and based on that interview the JIS published an article on its website on March 15, 2008. The article entitled “FTC Continues its focus on Competition Advocacy”, looked at some of the channels used by the FTC in its advocacy and public education activities; how the FTC handles some of the competition related complaints it receives, to the benefit of consumers; and briefly described the need for policy makers to give due consideration to competition issues whenever policy decisions and/or laws are being contemplated.

Together with a writer and radio producer the Staff created eight (8) episodes of an educational radio programme, known as “Under the Law”. They were aired during the month of March on Power 106 FM and Kool 97 FM. Each episode was broadcast four times per day on both radio stations.

The December 2007 issue of the Commission’s annual newsletter was published and circulated to both local and overseas interest groups.

#### **4.5 Economic Studies**

Pursuant to the Ministerial Directive issued to the FTC and the Office of Utilities Regulation (OUR) for both bodies to carry out a study of the telecommunications sector with a view to assessing the impact of liberalization on that sector, the Study was completed and submitted during the year. The analysis revealed that:

- The impact of the liberalization process differs across the various market segments, particularly with respect to their competitive dynamics.
- Competition is strongest in the retail mobile and international segments of the sector.
- Mobile operators have emerged as the incumbent’s main competitors; they compete directly with the incumbent’s mobile network and also provide some degree of inter-modal competition for its fixed network.



- The international segment has benefited significantly from the entry of new operators (many of them service-based) who have driven down the rates for international calls.
- Competition is much less intense in the fixed market segment. CWJ's ownership of the copper local loop gives it significant control over the provision of fixed access retail and wholesale services.
- The majority of consumers are satisfied with their suppliers and the range of their service offerings.

The Study also recommended that ex-ante access obligations (beyond the current interconnection requirements) be placed on dominant network operators. These obligations will provide access seekers with access to particular facilities on reasonable terms and conditions, and will ensure that all operators have an incentive to price their services in a manner which reflect the most efficient use of the underlying network. It was also found that the sector's contribution to economic growth has moved from J\$14.28b in 1999 to \$28.51b in 2004; and over 60% of consumers reported satisfaction with landline service.

Investigations into the markets for electronic money transmission and cambio services as well as the cable television sector are nearing completion. The results will be released early in the upcoming Financial Year.

The Commission participated in the "Dissemination of Information on the Energy Policy 2006", where two Officers of the FTC were selected to be members of the Energy Policy resource panel which reviewed and commented on the first draft of the Green Paper. The Commission prepared a technical Tool Kit for consultation with players in the petroleum sector and we were members of the sensitization team which met with civil society in several meetings throughout the island, to hear person's views on the new energy policy.

In addition to participating in on-going consultations with the OUR on various telecommunications issues, the FTC also participated in meetings of the ICT Cabinet Sub-committee as well as the consultation process on the Telecommunications Policy 2007.

## **5.0 Participation in Development of Trade Policies**

During the Financial Year the FTC continued to participate in meetings of the Task Force on the implementation of Competition Law & Policy in CARICOM. The objectives of the Task Force included (a) reviewing the draft Model Law on Competition Policy; (b) visiting the CARICOM member states to meet with the public and private sectors in an effort to sensitize all stakeholders on Competition Policy in the CSME and the relevant provisions of the Revised Treaty of Chaguaramas; and (c) preparation for and the launch of the CARICOM Community Competition Commission, which took place on January 18, 2008.

The Commission made presentations to members of the private and public sectors of Trinidad & Tobago, Barbados, Guyana, Belize, Suriname and Jamaica. The Jamaica sensitization sessions were organized by the Commission and also included meetings with members of the Judiciary, the UWI community as well as members of the Montego Bay Chamber of Commerce and the Cornwall Bar.

In addition, the Commission participated in and or presented at international seminars or workshops hosted by the CARICOM Secretariat, International Competition Network (ICN), Organisation for Economic Co-operation and Development (OECD), the United Nations Conference on Trade & Development (UNCTAD), and the International Development Research Centre (IDRC).

## **6.0 Legislative Processes**

There have been 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 will be influenced by the structure that will be adopted.

During the period under review a draft Bill containing the relevant proposals for amending the FCA issued from the Office of the Chief Parliamentary Council (CPC); and was perused by the FTC. Comments were forwarded to the Ministry of Industry Investment & Commerce (MIIC) and further discussions are underway. The structure proposed by the MIIC provides for the establishment of a Competition Tribunal to hear Competition cases.

The launch of the CARICOM Community Competition Commission (CCC) has brought in sharp focus the urgent need to have incorporated into the FCA, provisions to facilitate the effective operation of the CCC. The Commission has forwarded to the MIIC proposals highlighting a range of provisions that may be considered. To the extent that these provisions are yet to be incorporated in the draft amendments to the FCA, Jamaica's state of readiness to give effect to the relevant requirement under the Revised Treaty of Chaguaramas regarding the enforceability of determinations of the CCC is yet to be realized.

## **7.0 Funding from International Agencies**

### **7.1 International Development Research Centre (IDRC)**

In May 2006, the IDRC's research grant of CAD\$46,000 was issued to the FTC for the purpose of conducting research into competition-related issues in the pharmaceutical industry in Jamaica.

The research was completed in March 2007 and the main findings were, among other things, that only six out of every ten regular users of prescription medication have ever heard of the term 'generic medication' and half of that number indicated that they always follow their doctors' instruction when taking medication. The study provided insight into Jamaicans' lack of awareness of basic information as well as insight into their habits and attitudes towards generic and branded medication.

The study also establishes the potential impact these and other factors are having on the distribution of pharmaceuticals in Jamaica and makes recommendations for improving competitiveness in the pharmaceutical sector. The results have been disseminated to the relevant players, and extensive discussions are to ensue.

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

The 2007/2008 Financial Year was the third year of a three (3) year IDB Project aimed at strengthening the technical capacity of the FTC and improving its outreach capabilities. The Project is funded through the IDB Multilateral Investment Fund (MIF) and counterpart contributions from the Government of Jamaica

Some of the project achievements and activities, facilitated through the Project during the year under review are:

- The Competition Law Consultant who was hired to provide specialized technical assistance, as well as 'classroom' and on-the-job training completed three (3) visits, bringing the total number of visits to eight (8). He was contracted for (9) visits; the final one being scheduled for April 2008. Work on the Commission's operational manual for the investigation, analysis and enforcement of competition policy, is at an advanced stage.
- We hired a Network Specialist Consultant to provide assistance with competition cases relating to network industries such as telecommunications, electricity and transportation. The Consultant completed three (3) of five (5) visits; the last two being scheduled for the first half of the upcoming Financial Year.
- FTC participation in two (2) separate specialized international courses in Competition Law.
- In-house seminars were conducted, to allow other members of Staff to benefit from the information acquired; and copies of the literature from the Courses were placed in the Commission's Library for future use by the Staff.
- The Technical and support Staff benefitted from a five (5) day Course in "The Art of Public Speaking", the objective being to improve our communication skills, specifically in respect of making presentations, responding to the public in general and the media in particular.
- Acquisition of reference materials related to antitrust issues. The Project has assisted in the acquisition of a total of twenty-five (25) books on the relevant subject area and three (3) subscriptions to various law journals.

- Upgrade of the Commission's customized Database & Workflow Management Systems (CIMS) which houses the Commission's data and case information in an electronic format, and which guides the Staff through investigation processes by way of an automated workflow.
- The hosting of the eighth Shirley Playfair Lecture held in September 2007 and the workshop for members of the Judiciary, held in March 2008. In addition to members of the Jamaican Judiciary at both the Supreme Court and Appeals Court levels, the members of Jamaica's Telecommunications Appeals Tribunal as well as Judges from Barbados, Trinidad & Tobago and the Caribbean Court of Justice, also participated.
- Purchase and installation of presentation equipment and video conferencing facility.
- Upgrade of and improvements to our website.

The following table provides a breakdown of the amounts expended under the Project as well as the balance remaining as at March 31, 2008.

**(US\$)**

<b>Activities</b>	<b>MIF Contribution</b>	<b>Local Contribution</b>	<b>MIF Contribution</b>	<b>Local Contribution</b>
	<i><b>Expended to date</b></i>	<i><b>Expended to date</b></i>	<i><b>Balance not yet spent</b></i>	<i><b>Balance not yet spent</b></i>
Component I	143,715	51,829	85,285	17,471
Component II	31,755	6,521	8,245	9,479
Project Administration	0	29,756	0	15,244
Contingencies	4,678	1,766	322	3,234
<b>TOTALS</b>	<b>180,148</b>	<b>89,872</b>	<b>93,852</b>	<b>45,428</b>
<b>Portion</b>	<b>67%</b>	<b>33%</b>		

Of the unspent amounts commitments have been made for amounts of US\$72,102 and US\$32,331, in respect of MIF and Local Contribution respectively.

### **7.3 Private Sector Development Programme (PSDP)**

In May, the FTC entered into a Grant Contract with Jamaica Trade & Invest, for several activities aimed at strengthening the technical capacity of the Commission, to be undertaken over a one year period. This Project, valued at J\$7,273,825 is being funded by the European Union through the Private Sector Development Programme (PSDP) and the Government of Jamaica on a 75%:25% split.

Some of the activities that were undertaken and completed are:

- Attendance by two (2) Staff members and a Commissioner at three (3) separate Competition Law Conferences or Workshops.
- Acquisition of a multimedia projector, lap top computer, and a printer.
- Publication of the 2007 edition of *Competition Matters* and a brochure.

## 8.0 Other Issues

Following a shift in focus from seeking individual redress in consumer cases to identifying market implications of consumer related offences, during the 2006/2007 Financial Year, the FTC and the Consumer Affairs Commission (CAC) agreed that it would be necessary to have a Memorandum of Understanding (MOU) between both Agencies. It was perceived that the MOU would outline the limits of the relationship between the two (2) Agencies with respect to the types of cases that each one would investigate. During the current Financial Year, the CAC indicated that upon further consideration of the May 31, 2005 Ministerial Directive, it would not pursue the MOU.

With increased focus on Competition cases it became useful and necessary for us to develop clear criteria for selecting the cases that ought to be investigated. To this end the FTC developed and finalized its Case Selection Criteria which is designed in such a manner that it ensures transparency, certainty and uniformity in the case selection process.

The criteria include factors such as:

- whether the alleged conduct falls under the FCA;
- the seriousness of the conduct;
- obstacles that may be faced were we to proceed;
- the degree to which there are likely to be incentives for the Respondent to engage in the alleged conduct;
- the anti-competitive and/or the pro-competitive effects that may exist;
- whether the alleged conduct is widespread in the relevant industry;
- the jurisprudential value of pursuing the matter;
- whether the relevant evidence is obtainable by reliable and reasonable means; and
- the existence of local or foreign precedents for prosecuting the alleged conduct.

Whereas the Commission previously filed matters in the Civil Division of the Supreme Court, it has been filing in the recently established Commercial Division over the past year. This move has proven to be very effective as the time within which matters are set for hearing, has been drastically reduced. On average, matters which previously took up to a year for a first hearing, now proceed to a first hearing within three to four months of being filed in the Supreme Court registry. For example, a matter filed on February 7, 2007 came up for hearing on May 8, 2007. The Department will continue to utilize the Commercial Division of the Supreme Court and it is expected that for the upcoming year this route will allow for matters to be disposed of much more quickly and effectively.

There is another apparent benefit to the use of the Commercial Division. The Court seems to assign particular judges with the apparent aim to allow for specialization in specific areas of commercial law. This has resulted in having the same judge who was appointed to a matter in 2004, being appointed this year to hear two Section 37 cases.

## **9.0 Summary of Main Programmes for the 2008/2009 Financial Year**

The Commission's goals for the upcoming fiscal year are:

- Increased Competition advocacy, specifically in the area of Merger Review; coordinating activities with other Government agencies, and informing them about the role of the FTC; and how that role intersects with theirs, and how public sector agencies can cooperate in monitoring the conduct of businesses in the economy;
- Improving its technical capacity especially in the area of network industries;
- Further training of the Judiciary;
- Encouraging improvements in services provided to consumers by developing procedural guidelines for use in various sectors;
- Collaborating towards finalizing the amendments to the FCA;
- Educating manufacturers and distributors on how to identify the various offences against competition; and
- Influencing decisions by the Ministry of Foreign Affairs & Foreign Trade as it seeks to keep Jamaica's competition policy relevant, thereby contributing to the fine-tuning of Competition Law and Policy in CARICOM.

## 10.0 Budgetary Allocation

The following table summarises the actual amounts expended by the Commission in each of the three (3) previous Financial Years. Also included is the Budgetary Request for the 2008/2009 Financial Year.

<b>Object</b>	<b>2008/2009 Request (\$)</b>	<b>2007/2008 Actual (\$)</b>	<b>2006/2007 Actual (\$)</b>	<b>2005/2006 Actual (\$)</b>
Compensation of Employees	47,969,114	45,326,100	35,569,405	34,470,691
Travel Expense & Subsistence	4,730,656	4,425,170	2,906,447	2,556,500
Rental Of Bldg., Machinery & Equip.	4,767,547	4,551,824	4,351,642	4,540,344
Public Utility Services	1,660,000	1,580,604	1,230,588	1,371,002
Purchase of other Goods & Services	2,306,468	1,895,133	3,465,437	3,665,158
Asset Purchases	100,000		249,381	298,676
<b>Total</b>	<b>61,533,785</b>	<b>57,778,831</b>	<b>47,772,900</b>	<b>46,902,371</b>

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**Karl Samuda**  
**Minister**  
**Ministry of Industry, Investment and Commerce**  
**May 30, 2008**