

## THE ROLE OF CARIBBEAN GOVERNMENTS IN FACILITATING CONSUMER PROTECTION IN THE REGION

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A simple definition of Globalization as set out in the New Edition Penguin Dictionary of Economics is “Geographical shifts in domestic economic activity around the world and away from nation states.” The Organization for Economic Cooperation and Development (OECD) defined it as “the geographic dispersion of industrial and service activities and the cross-border networking of companies.” And the frightening thing about this monster is that:

- it no longer requires a physical presence of companies in other countries.
- It no longer requires exports or imports

activity can be shifted around by licensing, in which case all that is required is:

- information and
- finance to cross-borders.

the rapid pace of globalization is facilitated by factors like:

- improved transportation
- advanced technology in communications
- deregulation in many sectors
- the removal of trade barriers/restrictions
- removal of exchange controls

and today we in the Caribbean have all become quite familiar with the concepts of:

- decentralization
- economic liberalization
- divestment
- competition

as a means of determining the

- production and
- distribution

of goods and services

AKA “free market economy, “ which has, for the most part displaced the concept of: state direction with price control and exchange control and leading many to view that we have reverted to the law of jungle: “survival of the fittest,” which might not be such a revolting idea in the long run, if seen from the perspective of the consumer as he makes his choices of goods and services in the new market economy.

Concern has been expressed by some areas of the developed world that economic activity and employment will drift to the developing countries; like Mexico and perhaps the Caribbean. Conversely, with the disappearance of trade barriers, sectors of the developing world are apprehensive that indigenous labour forces will be replaced by foreign imported labour forces.

We are, as we speak, watching a phenomenon playing itself out in the Jamaican apparel industry in our Freezone area. The labour force in that sector is looking increasingly Asian; and one of our local Talk Show received a call recently from a displaced Freezone worker, who while bemoaning the loss of her job, was honest enough to add: (story re Phillipinos).

Despite the fears on both sides of the economic fence, the experts agree that all nations in the globalization process will gain, in the long run.

It is recognized, however, that "Free-market" cannot mean "free-for-all". There is economic evidence that international cartels tend to operate in ways that are particularly harmful to developing countries (I wonder if we will ever lose that designation) and therefore market liberalization must operate within appropriate regulatory and competition framework. A commentator in a recent OECD Journal of Competition Law and Policy observes that for developing countries enacting and enforcing a competition law is not merely an important element of regulatory reform but a matter of economic self-defence.

Obviously, a country which seeks to defend itself economically is ultimately protecting its consumers. It is acknowledged that a free market economy benefits consumers in a number of ways, the significant ones of which are:

- giving rise to improved technology in production
- increased opportunities for more players in the market, which gives rise to:-
- increased competition between companies, giving consumers wider choices in goods and services, requiring that
- the quality of those goods and services improve, resulting in higher levels of efficiency, and therefore
- lower prices

For the past few months we in Jamaica, have been experiencing a text book case of the effects of competition: with the entry of a new telecommunications Company, Digicel and the impending entry of another- centennial into the telecommunications market.

Consumers of cement are poised to benefit from competition in that market: with the entry of Mainland International, to compete with Caribbean Cement.

But all these benefits can be easily derailed if proper controls are not put into place and perhaps, the most effective control is a competition policy and a

competition law. Governments of the region are therefore obliged to put into place a competition law which can effectively promote competition in a fair environment. I am aware of Trinidad & Tobago's nascent competition legislation and no doubt its promulgation is anxiously anticipated. (Ask for a copy of Bill).

The law must conduce to the benefit of the consumers, but the way in which it does so is a country's choice; The purists take the view that competition issues are distinct from consumer protection issues and are to be kept separate; they are content that at the macro level, competition law serves to promote consumer welfare and protect consumer interest. Understandably, behaviour which injures a competitor in the market will not necessarily injure consumers in the short or medium term, at least; and so one can appreciate the distinction between Competition Law and Consumer Protection Law.

When one recognizes however, that competition releases onto the market increased producers of goods and services and therefore increased volumes and varieties of goods and services, one recognizes that consumer protection in the new commercial environment has to be tackled on many fronts – a thinking embraced by the Jamaican legislators in drafting the Fair Competition Act.

One of the most important tools which the consumer requires for use in his own protection is information. Thus Section 5(2)(a) of the Act fixes the Fair Trading Commission (the Body set up to administer the Act) with a duty to make available:-

- (i) to persons engaged in business, general information with respect to their rights and obligations under [the] Act.
- (ii) For the guidance of consumers, general information with respect to the rights and obligations of persons under [the] Act affecting the interests of Consumers.

Section (5) (2) (d) sets out as another duty of the Commission "...to undertake studies and publish reports and information regarding matters affecting the interest of consumers".

In carrying out the mandate, the Commission engages itself in, among other activities:

- printing and distributing brochures, pamphlets and leaflets.
- Radio and television broadcasts.  
In this regard advantage is taken of a radio slot known as "Time Allowed for Government Broadcasts", facilitated by the Jamaica Information Service, an Executive Agency established under the Office of the Prime Minister.
- Seminars in educational institutions as well as at the community level.
- Public lectures (Mrs. Boza for Shirley Playfair Lecture 13<sup>th</sup> September, 2001)

- Career day/fairs at all levels of the educational structure
- Issuing of newspaper releases

It is Part VII of the Act, however, which most poignantly reflects the legislature's direct concern for consumer welfare. One of the areas addressed in this part is Misleading Advertising, making it an offence for a person, in pursuance of trade and for the purpose for promoting the supply of goods and services, or any business interest, to, among other things:

- “ (a) make a representation to the public that is false or misleading in a material respect;
- (b) make a representation ...in the form of a statement, warranty or guarantee of performance, efficacy or length of like goods that is not based on an adequate and proper test...and the proof of which lies on the person making the representation;
- (c) ...that services are of a particular kind, standard, quality or quantity.”

N.B.: Amendment is before Parliament to add “likely to mislead”.

The range of offences in this part of the law includes :

- Double Ticketing
- Sale at a bargain Price (Bait and Switch)
- Sale above advertised Price’.

Understandably, complaints in respect of these matters form the bulk of the complaints fielded by the Commission, accounting for about 40% of all matters, and out stripped only by a category which we call N/A, i.e. not under the Act.

Complaint:- e.g. “Ah painting a house for this woman...what yuh think is a fair price?”

Such matters are referred to other entities which are also charged with consumer protection. One of those entities is the Consumer Affairs Commission.

The Consumer Affairs Commission (CAC) is established, like the Fair Trading Commission, under the Ministry of Industry, Commerce & Technology. It sees itself as providing a balance between consumers and businesses in a de-regulated market economy. Currently the CAC derives only tenuous authority from The Trade Act, which will be repealed upon promulgation of The Consumer Protection Act. In the absence of such an Act the CAC holds monthly meetings with the food, grocery and pharmaceutical trades in an effort to influence the behaviour of business and to get a fairer deal for the consumer. The work of the Consumer Affairs Commission is informed first and foremost by Government Policy, which focuses on:-

- a strong and dynamic consumer movement as being essential for the success of the free market system;

- non-developing none-confrontational but active and responsive consumer lobby and encouraging its development.
- Empowering the consumer through legal, institutional and administrative support and market intelligence.
- Assisting in developing the consumer's capacity to influence the market intelligently and in an informed manner, and influence Government Policy.
- Assisting in the development of consumer advocacy skills
- Assisting consumers to organize to represent their own interests to promote competition and not impede the capacity of the private sector to deliver goods and services.

The CAC's programme is structured around eight (8) basic consumer rights and responsibilities, which are identified as:-

- the right to the satisfaction of basic needs.
- the right to be protected against hazardous products and processes.
- the right to have the facts needed to make informed choices.
- the right to choose between a variety of goods and services.
- the right to be heard in the making and executive of Government policy
- the right to fair settlement of just claims
- the right to acquire the skills and knowledge to be informed and responsible consumers
- the right to live in a healthy and sustainable environment

These are the essential rights recognized by the United Nations Guidelines on Consumer Protection, to which Jamaica is a signatory.

With rights of course, come responsibilities. The consumer must therefore:-

1. be alert as to the quality and safety of the goods and services he purchases
2. avail himself of all information available about the products on the market
3. make decisions only after giving careful considerations to his needs and his ability to afford the goods and services available.
4. Be prepared to speak out so that the Government and the producers of goods and services can be made aware of his needs and expectations
5. express his dissatisfaction in a fair and honest way and seek redress
6. respect the environment and understand the environmental consequences of his consumption
7. not to engage in or condone dishonest practices

The Commission's work is influenced in a real way by the nature of the complaints which it receives-from complaints about shoddy goods to complaints about failure to perform under a contract.

In its own words, it will have succeeded in carrying out its mandate when the Jamaican consumer can be described as knowledgeable, assertive, discriminating and vigilant.

When the consumer sees himself as being able to influence change in the market-place; when he recognizes that if he does not buy there is no trade and therefore he has the power to dictate standards, and to a large measure, prices; when he exercises his choice sensibly we will be well on our way to realizing the benefits of competition and surviving in a global market.

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**27<sup>TH</sup> JUNE, 2001**