
The Role of Public Policy & its Relationship to Competition Policy: Jamaica's Experience¹



David Miller

Executive Director, Fair Trading Commission

July 4, 2011

Thank you UNCTAD and SELA for inviting us here today; and thank you Colombia for hosting this very important seminar and for showing us a part of your country.

Introduction

We can all agree that efficient and innovative industries are critical to a country's economic growth and development; and that in order to achieve sustainable development we must have the necessary facilitating government policies. For this reason, it is of critical importance that all the components of the relevant policies are well designed and consistent with each other – they must be coherent and transparent, and must be effectively implemented to ensure maximum benefit to a country's citizens.

In this presentation I will focus on the policies of the Jamaican Government relating to regulated sectors, in particular highlighting possible conflicts between competition policy and telecommunication policy. I will also discuss some competition considerations relating to trade issues and procurement policies as well as the operations of state-owned enterprises. You will see

¹ This paper was presented at the "I Meeting of the Working Group on Trade & Competition of Latin America & the Caribbean", held on July 4-5, 2011, in Bogota, Columbia. The presentation was made in the session entitled "The Importance of coherence between competition and government policies".

that some of the challenges that we face as a competition authority arise from weaknesses in the level of coherence between the respective government policy and competition policy.

Regulated Sectors & Competition

Jamaica's competition law is one of general application, which applies to all sectors. In several cases such as the telecommunications sector, the sector regulator and the competition authority have overlapping jurisdiction. In fact, Jamaica's Telecommunications Act (TA) expressly recognizes the jurisdiction of the competition authority. While this is so there is at least one inconsistency in its application. That is, where the holder of a telecommunications license wishes to transfer its license and operation to an existing operator. The Telecoms Act does not require consideration of the competitive effect of the transfer, and therefore a dominant provider may acquire the operations of one of its competitors without being subjected to the relevant competition assessments. This situation is now being played out in Jamaica. It should be noted that the competition law does not contain provisions which stipulate that a merger review process must be undertaken prior to the consummation of a merger.

ICT Policy

Because of the transformation of Jamaica's telecommunications landscape over the past 12 years, policy-makers have recognized the value of giving consideration to competition issues in its deliberations with respect to that sector. As a result, the recently tabled ICT policy, which is soon to be transformed into legislation, recognizes the need for merger review procedures and it is being proposed that the relevant legislations be re-drafted to expressly take note of competition issues. We note however, that other sectors have yet to move in that direction.

Other regulated sectors

With most other regulated sectors such as finance, electricity, water and transportation, the relevant legislations existed before the competition legislation and therefore competition issues are not expressly included therein. There is therefore the potential for competition issues to be left out of deliberations because the respective laws do not clearly state that issues that may affect the functioning of the market must be considered. The FTC's advocacy programme attempts, as best as possible, to ensure that these issues are considered in the setting of policy with respect to these sectors.

One of the challenges however, is that the FTC is usually made aware of issues in those sectors at a late stage in the decision making process or even after a decision is made. This was the case in 2001 with the privatization of the electricity supplier where the activities of that supplier were exempted from the Fair Competition Act (FCA) by Ministerial Order. After years of advocacy efforts especially in the discussions surrounding the new Energy Policy as well as further developments in the electricity sector, the exemption was eventually removed in 2010.

State Owned Enterprises vs Private Sector

We have also had the situation whereby the state owned and operated garbage collecting agency is competing with the private sector in the collection of 'commercial' garbage. In this instance, national resources such as government funding, tax incentives and concessionary import duty rates on equipment, are used in the operations of the government entity thereby creating an unfair advantage *vis-a-vis* the private garbage companies which are not afforded any of these privileges. The effect of this is a reduction in the volume of business being conducted by the private companies, which is affecting their survival.

Our efforts therefore have been to advocate for the implementation of competitive neutrality arrangements through the separation of operations. That is, the operations of the government owned and operated garbage collector that handles the collection of residential garbage should be separated from the operation that handles 'commercial' garbage.

In contrast, Jamaica's state owned refinery of petroleum products (Petrojam) supplies all distributors including its own subsidiary (Petcom); but that subsidiary operates independently of the refinery and under similar purchasing arrangements as its competitors such as Texaco, Shell and Total.

Private Sector operations

There are instances where government policy treats goods with a similar purpose in a different manner thereby providing a competitive advantage to one set of suppliers over another. For example, there are different rates of import duties for imported used tyres and imported new tyres; and therefore the supplier of the used tyre who pays a lower duty is given an advantage over his rival, but not because of any kind of superior performance. The effect of this is that the government forgoes tax revenue and the market is distorted when the used tyre importer is not able to supply its product reliably and consistently.

Protectionist Policy vs Competition

Several years ago, in order to protect the local cement factory, the Jamaican Government increased the import duty on cement significantly, thereby yielding it unprofitable for cement importers to continue in that business. The competition authority of course supported the importation of cement because it provided consumers with a reliable supply of cement, as well as choices and competitive prices.

Three years after the increase in duties, the local cement company underwent a series of technological problems which resulted in a significant decrease in supply and sub-standard quality cement being sold in the market. The effect on the economy was enormous and the government in its effort to 'rescue' the construction industry reduced the duty rate on imported cement and re-opened the door to cement importers for a 2 year period. We at the competition authority estimated that for the 15-month period after imported cement entered the market, consumers benefited to the tune of approximately US\$10 million, through competitive prices.

Jamaica's poultry market is also protected by high import duty rates, quotas on imported chicken and subsidies to producers of chicken. The reason for this level of protection is the large number of persons that are employed in the sector and the perceived negative implications on the economy, were the protectionist measures to be removed. With respect to competition, the market structure, the large number of players and the manner in which the measures are implemented have yet to result in market distortions or other anti-competitive effects that are directly related to the protectionist policy.

Regional Trade vs Domestic Competition

There has been some discussion in the CARICOM region regarding the recent attempts by a new entrant into the airline sector to receive approval for operating in two of the key destinations in CARICOM, namely Trinidad & Tobago and Jamaica, the two largest markets. Redjet Airline has had to begun operating solely between Barbados and Guyana as it has yet to be granted access to Trinidad & Tobago and Jamaica.

Redjet's marketing campaign has been centred on its low cost airfares in the region and its fares between Barbados and Guyana are lower than the long established regional airline, Caribbean Airlines Limited (CAL). It is noted that it has been demonstrated in most regions that low-priced airlines do increase consumer welfare – they provide more options and lower prices and give consumers reasons to travel because it is more affordable.

Therefore, our Caribbean consumers are being deprived of the option of traveling on this lower priced carrier. The FTC is now reviewing the matter.

Procurement Policies

Procurement policies and guidelines should, and in Jamaica they do, consider competition issues such as bid rigging and collusive tendering. The structured regime through independent oversight, regimented approval process, registration procedures and periodic review of tax compliance are

some of the critical elements of the policy. In Jamaica for example, the policy allows for joint bidding by individual firms who may not be large enough to provide the requisite goods or services on its own, but who could provide the good or service just as well as an established larger firm. The process works well in that it is transparent, ensures accountability, and recognizes competition principles.

Government Policies Should Embrace Competition Policy

It is recognized that Governments need to adopt strategies and principles that promote internal and external coherence in the way they do business. Policy making should encompass the principles of proportionality, accountability, consistency, transparency and targeted regulation.

There is an important role to be played by competition authorities through advocacy and public education, which are done through public awareness programs and information dissemination. One critical aim of these efforts is the promotion a competition culture.

Duplication and overlap of duties is a common problem in government and Jamaica is no different. There must be means through which other agencies may be placed in a position to point out areas which may be affecting their operations; and for links to be made to strengthen the respective operations by reducing duplication and overlap. Sectors in Jamaica which require further coordination with the FTC include finance, agriculture and health.

We at the Jamaican competition authority have provided guidance on several government policies to ensure that competition concerns are adequately addressed. Some of the sectors that we have recently worked with include ICT, Agriculture, Energy, Food Distribution.

Conclusion:

The FTC of Jamaica acknowledges that competition policy is not the answer to all economic and social challenges. However we note that competitive markets can and do contribute to productivity and therefore economic growth. With growth a country will be in a much better

position to tackle its development challenges. It is therefore important that government policies support and be consistent with competition policy since the ultimate objective of government policies is sustainable development. As the saying goes “*those who share common goals must work together*”, our situation is no different – we have a responsibility to do as much as possible to ensure that our policies are coherent, that they sit well with each other, and therefore we must work together.

Thank you.